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UNIVERSITY SYSTEM FUNDING STUDY - SJR 16

January 2001

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UNIVERSITY SYSTEM FUNDING STUDY – SJR 16

Report of the Joint Subcommittee on Postsecondary Education Policy and Budget

To the 57th Legislature

Helena, Montana
January 2001

LETTER OF SUBMITTAL

September 1, 2000

Members of the 57th Legislature:

This report presents the recommendations of the Joint Subcommittee on Postsecondary Education Policy and Budget. The 56th Legislature approved Senate Joint Resolution 16 authorizing this study of the university system lump sum funding and the comparisons to other states.

Representatives of the Office of the Commissioner of Higher Education, the Montana University System, the Legislative Services Division, the Office of Budget and Program Planning, and the Legislative Fiscal Division met with the subcommittee. Their participation and assistance in providing information is greatly appreciated.

The subcommittee also appreciates the efforts of the personnel in the states of Arizona, Idaho, New Mexico, North Dakota, Oregon, South Dakota, and Washington. They provided the necessary information for this study.

Respectfully submitted,

Bea McCarthy

Senator Bea McCarthy, Chairman
Joint Subcommittee on Postsecondary Education Policy and Budget

MEMBERS OF THE JOINT SUBCOMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET

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THE JOINT SUBCOMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET

The Joint Subcommittee on Postsecondary Education Policy and Budget is a bipartisan, bicameral subcommittee of the Education and Local Government Interim Committee. However, in addition to the four representatives appointed by the House leadership and the four senators appointed by Senate leadership, the membership includes two Regents, a representative of the Governor's Office, and a postsecondary student.

The SJR 16 study assigned to this subcommittee was coordinated by the Legislative Fiscal Division and the Legislative Services Division with assistance from the Office of the Commissioner of Higher Education and the university campuses. This subcommittee report presents an overview of the work and SJR 16 recommendations of the subcommittee in the interim between the end of the 56th Legislature and the start of the 57th Legislature. The reports to the subcommittee are included in the Appendix.

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PURPOSE FOR THE STUDY

The Fifty-sixth Legislature passed SJR 16 requesting a study of certain aspects of university system funding. The Legislative Council approved the study and assigned it to the Education and Local Government Committee established by HB 13, which created the Joint Subcommittee on Postsecondary Education Policy and Budget (PEPB). The Education and Local Government Committee assigned SJR 16 to the PEPB.

According to language in SJR 16, the goals of the funding study include, but are not limited to:

1) evaluating the effectiveness of the current system of providing lump sum funding to the Montana University System;
2) identifying funding systems for higher education in other states and comparing them to the Montana system;
3) identifying alternative funding systems, such as delivering funding in the form of student scholarships; and
4) exploring practical methods of providing greater participation in policymaking and control of expenditures by communities in which higher education institutions are located.

SUBCOMMITTEE RESEARCH AND STUDIES

The PEPB addressed each of the goals specified in SJR 16 as noted below. The reports are presented in their entirety in the Appendix, as indicated in each section.

Evaluate Effectiveness of the Current System of Lump Sum Funding

Reports presented to the subcommittee drew a distinction between budgeting methods and allocation models. The budgeting for the lump sum is based on the last full fiscal year expenditures and legislative policy, while the university system allocation of the funds may be different, depending on management goals. The reports discussed how both budgeting and allocation could be used to further public policy, with the goal of defining "effectiveness" of the lump sum in terms of the public policy desired, promoted, and achieved.

The subcommittee reviewed a number of characteristics of the university system, including:

1) constitutional and statutory provisions for control of the university system and the public policy inherent in the legal requirements ("The Structure of Higher Education in Montana"-Appendix 1);

2) the history of lump sum funding ("Lump Sum Funding – History and Background Information" – Appendix 2);

3) the MUS student FTE and funding for fiscal years 1992-2000 (Appendix 3);

4) the various models of university management, which could vary from state control to a corporate model of management. The review included the changes in legislative control and public policy as Montana moved from the state-controlled model toward the corporate model of allocation of funds ("Models of State/University System Management" – Appendix 4);

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5) methods of budgeting, such as zero-based, incremental, formula-based, performance-based, and incentive budgeting. The review described the public policies promoted by each type of budgeting and how those policies are affected by the university allocation of the lump sum ("Models of State/University System Management" – Appendix 4); and

6) the university allocation method under lump sum funding compared to appropriations and the public policy implications of those allocations ("Legislatively Calculated Budget Compared to Allocation by Unit and Program" – Appendix 5).

Identify Funding Systems in Other States Compared to Montana

The PEPB reviewed three reports comparing funding, tuition policies, students, and faculty of the Montana University System to similar aspects of the university systems in Arizona, Idaho, New Mexico, North Dakota, Oregon, South Dakota, and Washington.

The report entitled, "Montana University System Compared to Systems in Selected States" is provided in Appendix 6. It compares the financing of the entire Montana University System to the financing of the systems in the selected states. Students, faculty, student faculty ratios, total current unrestricted funds, and instruction program expenditures are the primary comparison points.

"Montana University Units Compared to Peers in Selected States" is reprinted in Appendix 7. This report compares the individual Montana campuses to peers in the selected states in order to highlight the applicable public policy differences and similarities among them. In addition to comparisons noted in the system report above, this report also provides a per-student FTE cost analysis and tuition profiles for each of the comparison units.

The third report, "Governance, Budget, and Appropriation Comparisons: Montana vs. Surveyed States," is shown in Appendix 8. The purpose of this report is to: 1) compare the Montana state/university system governing and control relationships with those in other western states; 2) compare budgeting methods in Montana to those in other states; 3) show how those methods meet the various financing objectives for higher education; 4) illustrate the various methods used in Montana and other states to distribute the budgeted funds to the campuses; and 5) draw conclusions relative to the effectiveness of lump sum funding in terms of the public policy promoted and achieved.

Identify Alternative Funding Systems

The PEPB reviewed the report entitled, "Alternative Methods for Funding Higher Education," which is provided in Appendix 9. This report first identifies some of the current constitutional and statutory law relating to higher education. It then discusses the theory of the state policy environments for higher education and how the current practices fit within those environments. Finally the report addresses some potential policy changes, some of the statutory and constitutional changes needed to implement those new policies, and some possible financial consequences of those actions.

Greater Participation by Communities in Policymaking

The PEPB reviewed a report detailing the current statutory authorization for local advisory committees in areas where units of the Montana University System are located. These committees

have direction and control of the affairs of the respective units, other than financial control, only as conferred by the Board of Regents, which have constitutional control of the university system ("SJR 16 – Local Community Committees" and memo to Senator Miller, 11- 9-1999 – Appendix 10).

RECOMMENDATIONS

The Joint Subcommittee on Postsecondary Education Policy and Budget makes the following recommendations to the Education and Local Government Interim Committee and the 2001 Legislature in accordance with SJR 16:

1) Based on its evaluation of the effectiveness of the current system of providing lump sum funding, the subcommittee recommends that the legislature continue to approve lump sum funding for the Commissioner of Higher Education and the campuses of the University of Montana and Montana State University.

2) Because local committees, currently authorized by 20-25-303 and 304, MCA, are under the direction of the Board of Regents, the subcommittee recommends that no additional action or legislation is necessary to provide greater local participation in policy making.

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APPENDIX 1

The Structure of Higher Education in Montana

1) History of Higher Education Governance
2) The Appropriation Power of the Legislature
3) Authority of Board of Regents vs. Legislative Appropriation Power
4) Summary
5) Constitutional Provisions
6) Board of Regents v. Judge
7) Judge v. Legislative Finance Committee

THE STRUCTURE OF HIGHER EDUCATION IN MONTANA: MEANDERING THE MURKY LINE

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THE STRUCTURE OF HIGHER EDUCATION IN MONTANA:

MEANDERING THE MURKY LINE

Prepared by

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September 1999

This legal memorandum is in response to a request by the Joint Subcommittee on Postsecondary Education Policy and Budget for background on the history of the Board of Regents and an analysis of the constitutional and statutory authority of the Board of Regents and the Montana Legislature over higher education. Part I will include a brief history of the governance of higher education under Article XI, section 11, of the 1889 Montana Constitution and creation of the Board of Regents under Article X, section 9, of the 1972 Montana Constitution. Part II will examine the Legislature's power of appropriation under both the 1889 and 1972 Montana Constitutions. Part III will include a discussion of major court decisions interpreting the authority of both the Board of Regents and the Legislature regarding higher education. Part IV will summarize the constitutional and statutory authority of the Board and the Legislature, summarize the pertinent case law, and address the actions necessary to increase state control over the Board of Regents of the University System. This memorandum is not intended as an exhaustive analysis of either the history of the Board of Regents or the appropriation power of the Legislature, but rather is intended to provide a brief overview of the history of the Board of Regents, the Legislative appropriation power, and the pertinent legal issues related to those constitutional powers.

Part I

History of Higher Education Governance

In 1884, leaders of the Montana Territory drafted a proposed state constitution that included the creation of a Board of Regents modeled after that adopted in 1874 by the state of California.[1] Under that proposal, a Board of Regents had general supervision over a University of Montana. Although the United States Congress approved the proposed 1885 Constitution as a prerequisite for statehood, the 1889 Montana Constitutional Convention rejected the formation of a Board of Regents, believing that authorizing multiple boards would lead to encroachment by technical and other schools on each other.[2] Instead, the 1889 Constitutional Convention created one State Board of Education responsible for all Montana public education.

Under the 1889 Constitution, the Governor was a member of the Board, which ensured Executive Branch oversight of higher education. Additionally, the framers made the Board dependent on the Legislature by adopting Article XI, section 11, of the 1889 Constitution, which provided:

> The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, ***whose powers and duties shall be prescribed and regulated by law***. . . . (emphasis added).

As a result, the Board of Education, although a constitutional entity, was nevertheless completely dependent on the Legislature for its powers and duties. Until the Legislature passed laws to implement the constitutional mandate, the Board was virtually powerless. In 1893, the Montana Legislature, pursuant to its authority under Article XI, section 11, began enacting legislation that, among other things, outlined the powers and duties of the State Board of Education, granted the Board authority to oversee universities and elementary and secondary schools, statutorily determined the departments of the university, and legally mandated the course of instruction to be pursued.[3]

Section 17 of Montana's Enabling Act outlines lands granted by the federal government to the state for the purpose of establishing and maintaining some system of higher education, which included 100,000 acres for establishment and maintenance of a school of mines, 100,000 acres

for state teachers colleges, commonly referred to then as "normal schools", and 50,000 acres for establishment and maintenance of agricultural colleges.[4] Pursuant to this grant, the 1893 Legislature authorized establishment of the College of Agriculture and Mechanical Arts in Bozeman, a state "normal school" or teacher training campus in Dillon, and a School of Mines in Butte.[5] However, the state's coffers were so low that the School of Mines, authorized in 1893, did not open until 1898, and the Bozeman campus faced immediate financial problems when the State Treasurer refused to release funds.[6] The 1893 Legislature also enacted legislation requiring the State Board of Education to organize and select the site for the permanent location of the state university in Missoula[7] and in 1911 and 1913 enacted legislation establishing the law school and the forestry school as departments of the state university in Missoula.[8]

In 1914, in response to criticism about the weakness of higher education and planning, the Board hired its first chancellor.[9] Less than a year later, however, the Legislature enacted legislation to abolish the position, action that was subsequently vetoed by the Governor.[10] During the economic depression of the 1920s, the Board in 1923 limited enrollment because the four existing campuses lacked the buildings necessary to accommodate the current student numbers.[11] Notwithstanding the economic depression and the lack of buildings and adequate operating budgets for existing campuses, the 1925 Legislature approved the establishment of two new campuses in Havre and Billings.[12] As a result, the Legislature reduced funds available to the four existing campuses and forced the Board of Examiners to freeze its funding.[13] A 1929 report revealed that Montana was spending one-third less on its public campuses than any other state of similar age.[14] In 1930, despite the Depression, the Board persuaded Montana voters to approve a higher education mill levy increase and a new $4 million bond.[15] After World War II, increasing enrollment exceeded the Board's ability to manage or fund the demand and led to voter approval of a large mill levy increase in 1948.[16] In 1956, the Board, because of rising enrollment, responded by imposing the largest tuition and fee increase in the state's history and raised tuition again 2 years later in 1958.[17]

In addition to its financial troubles over the years, the State Board of Education's history includes a pattern of academic and personnel crises including, for example, the firing of an economics professor for publishing a report in 1919 that advocated the increased taxation of Montana's mining interests, the terminations in 1926 of an English professor for assisting a student with a creative writing journal during his spare time and a Business School faculty

member for feuding with the university president, and the firing of numerous faculty in the late 1930s who failed to comply with a Board rule requiring "proper standards" in the selection, purchase, distribution, and use of all books, periodicals, and plays on the campuses or who publicly criticized the Board.[18]

Despite a history plagued by chronic financial problems, documented incidences of academic freedom violations, labor strife, political partisanship, and lack of public confidence, the legal structure of the State Board of Education remained unchanged from 1889 to 1972. In 1958, however, a significant development regarding the governance of higher education occurred when an expert from the University of Utah recommended that Montana adopt a separate Board of Regents with either corporate or constitutionally autonomous status.[19] By the time a Constitutional Convention was called in 1972, many Montanans were demanding stronger leadership in public higher education.

The framers of the 1972 Constitution studied the higher education governance systems of many other states before finally concluding that a Board of Regents model would provide Montana with a system free from legislative and bureaucratic intrusions. From all the models studied, the framers ultimately chose the Michigan system of governance, which had the most constitutionally autonomous system in the country, as the model for creation of an autonomous Board of Regents.[20] The delegates debated and rejected many proposed amendments intended to weaken the proposed Board's autonomy, including several amendments aimed at restoring the Legislature's control over the University System's finances and administrative decisionmaking.[21] Constitutional Convention transcripts also reveal that delegates discussed that the "power of the purse", plus audit authority, was the only control that the delegates intended for the Legislature to have over higher education appropriations.[22] Since the Legislature had constitutional control over state funds, the Board would be required to draw educational funds through the State Treasurer.

Following the Convention, the people of Montana subsequently adopted the 1972 Constitution, including Article X, section 9, which, in part, provided:

> (2) (a) The government and control of the Montana university system is vested in a board of regents of higher education ***which shall have full power,***

> ***responsibility, and authority to supervise, coordinate, manage and control the Montana university system*** and shall supervise and coordinate other public educational institutions assigned by law. . . . (emphasis added)

With the creation of a separate board for higher education, the governance of the Montana University System was transformed from a purely legislative creation to a constitutional department. The function of defining the powers and duties of the Board shifted from one of absolute legislative prerogative to that of a Board limited only by the express language of the Montana Constitution itself. Under the new Constitution, the role of the Legislature in higher education was narrowed from one of defining all powers and duties of a State Board of Education to one of overseeing the functions of appropriations and audit, setting by statute the terms of office of members, and assigning additional educational institutions to the control of the new Board of Regents. The Senate was given the exclusive function of confirming gubernatorial appointments to the Board.[23]

The intent of the framers of the 1972 Constitution as to who has which powers and duties is further evidenced by comparing the powers of the Board of Regents under the provisions of Article X, section 9, with those granted the State Board of Public Education under Article X, section 9. Article X, section 9(3)(a)[24] expressly provides that while general supervision over the public school system rests in the Board of Public Education, the Legislature has the prerogative to provide other duties to the Board. No similar language is found in the provisions of Article X, section 9, concerning the Board of Regents.

After adoption of the 1972 Montana Constitution, many of the statutes enacted by the Legislature under the 1889 Constitution were either repealed or amended to remove laws mandating specific action in the area of university curricula or personnel.[25] Currently, Title 20, chapter 25, MCA, reflects the Legislature's responsibility in setting public policy in higher education and financial accountability, while recognizing the Board's authority under Article X, section 9, to supervise, coordinate, manage, and control the University System.

Part II

The Appropriation Power of the Legislature

The power to appropriate is a long-established, well-recognized power of the Legislature.[26] Article V, section 34, of the 1889 Montana Constitution provided that "[n]o money shall be paid out of the treasury except upon appropriations made by law . . .". This language was later adopted in Article VIII, section 14, of the 1972 Montana Constitution.[27] The term "appropriation", as used in the Constitution, has been defined by the Montana Supreme Court to mean "authority from the law-making body in legal form to apply sums of money out of that which may in be in the treasury in a given year, to specified objects or demands against the state".[28]

In addition to changing the governance of higher education in the 1972 Constitution, the framers also broadened the scope of the Legislature's appropriation power. Article VI, section 9, requires the Governor to submit to the Legislature a budget "setting forth in detail all operating funds the proposed expenditures and estimated revenue of the state". Article VIII, section 9, provided that "Appropriations by the legislature shall not exceed anticipated revenue", while Article VIII, section 12, states:

> **Strict accountability.** The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

However, prior to adoption of the new Constitution, the Legislature in 1963 enacted the Treasury Fund Structure Act, which contained in section 79-409, R.C.M. 1947, as its stated purpose:

> . . . to make possible the full utilization of modern accounting methods, to provide the legislative assembly with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect governmental costs and revenues.

The current purpose of the Treasury Fund Structure Act, now codified in section 17-2-101, MCA, is not significantly different. Its stated purpose is to simplify the accounting system and

treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislature with a greater measure of control over public money, and to enable the financial records of the state to accurately reflect the state's revenue, expenditures, expenses, and financial position in accordance with generally accepted accounting principles.

Section 79-410, R.C.M. 1947, of the Treasury Fund Structure Act provided for nine funds in the state treasury: (1) general fund; (2) earmarked revenue fund; (3) sinking fund; (4) federal and private revenue fund; (5) federal and private grant clearance fund; (6) bond proceeds and insurance clearance fund; (7) revolving fund; (8) trust and legacy fund; and (9) agency fund.

Section 79-410(4), R.C.M. 1947, provided:

> (4) Federal and private revenue fund. The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government.

Under current law, section 17-2-102(1)(a)(ii), MCA, derived from the original section 79-410(4), R.C.M. 1947, provides:

> (ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:
>
> (A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.
>
> (B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

Additionally, section 17-2-102, MCA, provides for the following fund categories and types: The governmental fund category, which includes the:

(1) general fund;

(2) special revenue fund type;

(3) capital projects fund type; and

(4) debt service fund type.

The proprietary fund category, which includes the:

(1) enterprise fund type; and

(2) internal service fund type.

The fiduciary fund category, which includes the:

(1) expendable trust fund type;

(2) nonexpendable trust fund type;

(3) investment trust fund type;

(4) pension trust fund type; and

(5) agency fund type.

The higher education funds, which include the:

(1) current fund;

(2) student loan fund;

(3) endowment fund;

(4) annuity and life income fund;

(5) plant fund; and

(6) agency fund.

Pursuant to its authority to ensure strict accountability, the Legislature enacted section 17-6-105, MCA, which directs the deposit of money in the state treasury as follows:

17-6-105. State treasurer as treasurer of state agencies -- deposits of money. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, savings and loan associations, or credit unions located in the city or town in which the agencies and institutions are situated, if there is a qualified bank, building and loan association, savings and loan association, or credit union in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Each bank, building and loan association, savings and loan association, or credit union shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits must be made in the name of the state treasurer, must be subject to withdrawal at his option, and must draw interest as other state money, in accordance with the provisions of this part.

(5) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by the agency, and all the funds must be deposited and invested in accordance with the covenants notwithstanding any provision of this chapter.

(6) Except as otherwise provided by law, all money, credits, evidences of indebtedness, and securities received by a state agency or institution must be deposited either with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds $100 or total collections exceed $500. All money, credits, evidences of indebtedness, and securities collected must be deposited at least weekly.

(7) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any money received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

While subsection (1) expressly authorizes the deposit of money into either a private bank or other authorized financial institution, subsection (7) provides that when determined to be in the "best financial interest of the state", money collected or received by any state agency, including the Board of Regents, must be deposited to the credit of the State Treasurer. Since better interest rates may be obtained by the state, it is arguably in the "best financial interest of the state" that all money be deposited in a state rather than private account. As a result, the Board of Regents by law is required to deposit all money in the state treasury.

Section 17-8-101, MCA, provides limits on the disbursement of money from the state treasury, and states:

17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, expendable trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by

the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that transfers its ending fund balance to the general fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law.

The Legislature defined an appropriation made by law in section 17-7-501, MCA, as follows:

17-7-501. Appropriations -- type. There are three types of appropriations within the meaning of "appropriation made by law" as used in Article VIII, section 14, of the Montana constitution:

(1) temporary appropriations enacted by the legislature as part of designated appropriation bills or sections designated as appropriations in other bills;

(2) temporary appropriations made by valid budget amendment; and

(3) statutory appropriations made by permanent law in conformance with 17-7-502.

Historically, the power to appropriate goes hand in hand with the legislative power to exercise control over expenditures through itemization.[29] After 2 years of lump-sum appropriations, the United States Congress, for example, began to itemize expenditures in its appropriation acts in 1793. Likewise, in Montana, itemization of appropriations dates back to 1891. This historically recognized itemization of appropriations is reflected in the 1972 Montana Constitution as Article VIII, section 9, requiring a balanced budget, Article VIII, section 12, providing a system ensuring strict accountability, Article V, section 10, fulfilling the audit responsibility, and Article X, section 9(1), requiring the State Board of Education to submit unified budget requests.

Part III

Authority of Board of Regents vs. Legislative Appropriation Power

Only 3 years after adoption of the 1972 Constitution, the Montana Supreme Court in the companion cases of State ex rel. Judge v. Legislative Finance Committee[30] and Board of Regents v. Judge,[31] had its first opportunity to analyze both the authority of the newly formed Board of Regents and the scope of the appropriation power of the Montana Legislature as a result of actions taken by the 1973 and 1975 Montana Legislatures.

During the 1973 Regular Session, the Montana Legislature enacted House Bill No. 55, which both appropriated money from the general fund and earmarked revenue accounts to various state agencies, including units of the University System, for the biennium ending June 30, 1975. Some agencies received additional funds during the biennium from the federal government, private donations, and interests, rents, and royalties from state lands.

House Bill No. 55 contained the following conditions and limitations on the expenditures of money:

> **Section 8.** If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriations from other sources, the ***funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget***, provided that:

(1) the decrease does not jeopardize the receipt of funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the Montana university system units all federal funds for existing programs, and those funds related to various supporting facilities and organizations such as auxiliary enterprises. ***All other moneys received from all other sources may be made available by an approved budget amendment.***

Section 14. The provisions set forth in this section are limitations on the appropriations made in this act . . . . It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its providions [sic] the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) . . .

(2) . . .

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of 82-109, R.C.M. 1947, which specifies that ***expenditures shall be applied against nongeneral fund moneys before general fund moneys.*** (emphasis added)

At the close of the biennium ending June 30, 1975, five of the units of the Montana University System had funds remaining in their respective earmarked revenue accounts. These balances were not used to offset expenditures from the general fund as required by section 8 of House Bill No. 55, nor were they expended prior to expending the general fund appropriation as required by section 14(3) of House Bill No. 55.

As a result, when the 1975 Legislature convened, it enacted House Bill No. 271, which appropriated money by various line items from various state operating funds to the Board of Regents for the University System for the biennium ending June 30, 1977, and contained a provision requiring an offset and a spending priority provision similar to House Bill No. 55. In addition, House Bill No. 271 also made the expenditure of appropriations contingent upon the Board of Regents certifying that it would comply with several specific conditions, including the spending priority provision. Section 12 of the bill also required the Regents to certify to the

Budget Director compliance with the provisions of House Bill No. 271 regarding limits on university president salary increases and expenditure of all monies received from sources other than the general fund. Senate Bill No. 401 provided that no state agency could spend in excess of an appropriation except under authority of a budget amendment approved by the Legislative Finance Committee. As a result, the authority for budget amendments under both House Bill No. 271 and Senate Bill No. 401 was vested in the Legislative Finance Committee.

In August, the 1975 Legislature convened in special session and amended House Bill No. 271 in House Bill No. 1, by adding section 13 to House Bill No. 271:

> **Section 13.** In addition to the appropriations contained in this act, all other monies received from sources other than the general fund and which were not available for consideration by the legislature are hereby appropriated. Such monies may be made available for expenditure only by a budget amendment approved by the legislative finance committee.

Claiming that these legislative acts infringed on the constitutional powers granted the Regents under Article X, section 9, of the 1972 Constitution, the Board of Regents refused to certify compliance with House Bill No. 271. After the Budget Director voided the University System appropriation, two separate lawsuits were filed related to House Bill No. 271 and Senate Bill No. 401--one by the Governor against the Legislative Finance Committee, alleging that the statute empowering the Finance Committee to approve budget amendments unconstitutionally delegated a power reserved to the entire Legislature, executive officer, or agency, and a second by the Board of Regents against the Governor, alleging that actions by the Legislature and signed by the Governor unconstitutionally infringed on the powers granted to the Regents under Article X, section 9, of the 1972 Constitution.

During oral arguments, the Regents cited changes in the provisions of the 1972 Constitution and argued that the University System and the Board constituted a fourth branch of government with powers that were vested completely in the Regents to the exclusion of the legislative and executive bodies.[32] Rejecting that argument, the Court in Board of Regents held that the powers granted the Regents in Article X, section 9, must be read in conjunction with the powers granted the Legislature in Article III, section 1, which divided governmental power into the Legislative, Executive, and Judicial Branches and prohibited encroachment, in Article V, section 1, which vested legislative power exclusively in an elected legislative body, and in Article VIII, section

12, which required the Legislature to insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.[33]

In discussing the constitutional powers involved, the Court in Board of Regents stated:

> Our task then is ***to harmonize in a practical manner the constitutional power of the legislature to appropriate with the constitutional power of the Regents to supervise, coordinate, manage and control the university system.*** At the outset, we note that ***there is not always a clear distinction between these powers . . . .***[34]

The Court in Board of Regents acknowledged that the 1972 Montana Constitution had broadened the scope of the Legislature's appropriation powers. Previous court decisions had limited the scope of the appropriation power to the general fund. The Court cited Article VI, section 9, which required the Governor to submit to the Legislature a budget "setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state", Article VIII, section 9, which prohibited appropriations by the Legislature from exceeding anticipated revenue, and Article VIII, section 12, which required strict accountability of revenue and expenditures. In reviewing the separation of powers provisions, the Court in Legislative Finance Committee held that, notwithstanding Article VI, section 9, which requires the Governor to submit a budget to the Legislature, the budget in Montana is a legislative budget not an executive budget.[35] The Court added that the power to adjust and finalize a budget resides in the Legislative body as a whole and constitutionally cannot be delegated to a legislative committee.[36]

Additionally, in addressing the scope of appropriation power, the Court in Board of Regents specifically stated:

> Thus the legislative ***appropriation power now extends beyond the general fund and encompasses all those public operating funds of state government.*** (emphasis added)[37]

The Court went on to limit the Legislature's appropriation power as follows:

> However we emphasize that ***the power to appropriate does not extend to private funds received by state government which are restricted by law, trust agreement or contract.*** Accordingly, we limit subsection (4) of section 79-410 which provides:

"(4) Federal and private revenue fund. The federal and private revenue fund ***consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income***, which are to be used for the operation of state government."

This provision, in view of our conception of the appropriation power, ***cannot be used as a basis for legislative control over expenditures of the types of private moneys enumerated*** above and is invalid to the extent it may be so read. (emphasis added)[38]

The Court went on to construe section 12(4) of House Bill No. 271, Laws of 1975, which provided:

(4) ***All moneys*** collected or received by university system units subject to this act ***from any source*** whotsoever [sic], including federal grants for research and operations, ***and any moneys received from a foundation*** shall be deposited in the state treasury pursuant to the provisions of Title 79 R.C.M. 1947, ***except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any university system unit subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury, provided that the anonymity of private foundation donors shall be maintained and that private donations shall not be used as an offset to general fund appropriations***. (emphasis added)[39]

In construing the bolded language, the Court reiterated its earlier holding:

Based on our earlier discussion of the legislative appropriation power, ***certification cannot be used as a boot-strapping device to gain legislative control over private moneys***. As noted heretofore, ***private moneys restricted by law, trust agreement, or contract are beyond the appropriation power***. To the extent then that the certification requirement of Section 12(4) attempts to exert any control over such private moneys or to grant any discretion over such funds to the department of administration, it is unconstitutional.[40]

Under current law, section 17-2-102(1)(a)(ii), MCA, is derived from the original section 79-410(4), R.C.M. 1947, the section construed in Board of Regents. The section provides:

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial

activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

Private money received by the state and restricted by law, trust agreement, or contract is deposited in the state treasury, but is not subject to the Legislature's appropriation power.

Additionally, the Court held:

> . . . legislative control of higher education through the appropriation process remains. The Regents are a constitutional body in Montana government ***subject to the power to appropriate and the public policy of this state.***[41]
>
> However, ***the legislature cannot do indirectly through the means of line item appropriations and conditions what is impermissible for it to do directly. Line item appropriations become constitutionally impermissible when the authority of the Regents to supervise, coordinate, manage and control the university system is infringed by legislative control over expenditures.*** (emphasis added)[42]

The Montana Supreme Court adopted the analysis of the Minnesota Supreme Court in State ex rel. University of Minnesota v. Chase, concerning the propriety of legislative conditions to University System appropriations as follows:

> . . . At the one extreme, the Legislature has no power to make effective, in the form of a law, a mere direction of academic policy or administration. At the other extreme ***it has the undoubted right within reason to condition appropriations as it sees fit. "In such case the regents may accept or reject such appropriation. . . . If they accept, the conditions are binding upon them."*** (emphasis added)[43]

The Montana Supreme Court determined that conditions attached to appropriations must be individually scrutinized to determine their propriety.[44]

The Montana Supreme Court quoted from Regents of University of Michigan v. State, with respect to the types of conditions that could be attached to appropriations.[45] Conditions found valid included business and accounting procedures, annual reports, fair and equitable distribution among departments, and maintenance of departments. Conditions found invalid included a requirement to move a department and limiting the amount of funds spent on a particular department. The Court in Board of Regents applied this analysis to find invalid the Legislature's attempt in House Bill No. 271 to control the level of college presidents' salaries. The Court noted that inherent in the constitutional provision granting the Regents their power is the realization that the Board of Regents is the competent body for determining priorities in higher education. An important priority is the hiring and keeping of competent personnel.[46]

A year after the Board of Regents decision, Attorney General Woodahl was asked in 1976 by Commissioner of Higher Education Pettit for an opinion on whether, under provisions of House Bill No. 55, the University System could carry over earmarked revenues in the form of student fees from the 1973-1975 biennium for expenditure by approved budget amendment during the 1975-1977 biennium or whether it must use the balances to reduce general fund expenditures during the 1973-1975 biennium.[47] Section 8 of House Bill No. 55, provided:

> **Section 8.** If operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the ***funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget***, provided that:
>
> (1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and
>
> (2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Additionally, sections 11 and 14, respectively, provided:

> **Section 11.** In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the Montana university system units all federal funds for existing programs, and those funds related to various supporting facilities and organizations such as auxiliary enterprises. ***All other moneys received from all other sources may be made available by an approved budget amendment.***
>
> **Section 14.** . . . It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its providions [sic] the amount and conditions under which the appropriations can be expended. Except as provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:
>
> (1) . . .
>
> (2) . . .
>
> (3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of 82-109, R.C.M. 1947, which specifies that ***expenditures shall be applied against nongeneral fund moneys before general fund moneys.***

Audits of the various university units disclosed funds in the earmarked revenue and income accounts that had been earmarked and received in the 1973-1975 biennium and carried over to the 1975-1977 biennium. The funds were unanticipated nongeneral funds that were not used to offset the general fund nor were they expended prior to expenditure of the general fund appropriation.

Attorney General Woodahl noted that in Regents of University of Michigan v. State, a case cited favorably in Board of Regents, the Michigan Court of Appeals addressed itself to a similar statute that had the same effect as section 8 of House Bill No. 55.[48] The Michigan statute imposed conditions and limitations on appropriations granted by the Legislature to the Michigan Board of Regents as follows:

> **Section 26.** If revenue from tuition and student fees . . . exceeds in the aggregate the amount reported by the institutions of higher education in their notification of April 15, 1971 for Michigan resident students as a result of an increase in student fees or tuition the general fund subsidy appropriated for the support of that branch or institution of higher education shall automatically be reduced by the amount by which such revenue exceeds the amount reported.

Quoting the trial judge in the lower court, the Michigan Court of Appeals noted

that:

> Section 26 provides that the general appropriation will automatically be reduced by an amount equal to any monies received by plaintiffs as a result of an increase in student fees or tuition above that reported on April 15, 1971. The effect of such a provision is to prohibit the plaintiffs from increasing their revenues by increasing tuition rates and student fees, because any increase by the plaintiffs will automatically result in an equal decrease in funds already appropriated.

The Michigan lower court concluded:

> Since the Legislature could not directly prohibit plaintiffs from increasing their tuition rates or student fees, it cannot do so indirectly by deducting any increases from the funds appropriated to the plaintiffs. Further, as was previously stated, once the legislature makes a general appropriation to plaintiffs it becomes the property of the plaintiffs and passes beyond the control of the legislature.

Attorney General Woodahl then held that section 8 of House Bill No. 55, if enforced, would have the same effect on the units of the Montana University System as section 26 had on the University of Michigan. Quoting Board of Regents, the Attorney General ruled the offset requirement unconstitutional as the Legislature would be trying to do indirectly what it could not do directly--establish tuition rates for the University System.[49]

Part IV
Summary

The 1889 Constitution vested control and supervision in the State Board of Education, but gave full authority to the Legislature by limiting the Board's powers to those that "shall be prescribed and regulated by law". Under this provision, it was the Legislature that not only prescribed the duties and powers of the State Board of Education, but also, after some of the most vocal debates of the Constitutional Convention, statutorily established the location of the various units and departments of the University System. With adoption of the 1972 Constitution, however, a newly created Board of Regents was given "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system". As a result, the Legislature that had the authority to decide on the number and location of the various units of the University System under the 1889 Constitution ironically found itself, with adoption of the 1972

Constitution, without any authority to eliminate or directly alter the makeup any of those legislatively created units.

Until 1996, there had been no attempts to alter the power granted the Board of Regents under the 1972 Constitution. On November 5, 1996, the Legislature submitted to the electorate Constitutional Amendment No. 30, which, if approved, would have seen a return to the 1889 system of higher education governance. As drafted, it proposed to amend the Constitution to eliminate the Board of Regents, the State Board of Education, and the Commissioner of Higher Education and replace them with a Department of Education, with a Director appointed by the Governor. The constitutional referendum also proposed creation of an eight-member appointed State Education Commission with duties determined by the Legislature. The voters defeated the referendum by a margin of 63% to 37%.

Without a constitutional amendment similar to CA 30 to either restrict the autonomy of the Board of Regents or to perhaps expand the Legislature's financial authority over nongeneral funds now constitutionally controlled by the Board of Regents, the Court in Board of Regents made it clear that the constitutional power of the Board of Regents to "supervise, coordinate, manage and control the Montana university system" must be harmonized with the constitutional powers of the Legislature.

While the current Constitution vests autonomous power over the University System to the Board of Regents, the power of appropriation belongs exclusively to the Legislature as a whole and cannot be delegated to another branch of government or to a Legislative committee. While previous court decisions had limited the scope of the appropriation power to the general fund, the Court in Board of Regents acknowledged that the 1972 Constitution expressly broadened the scope of the Legislature's appropriation power to encompass all public operating funds of state government.

In analyzing the Legislature's responsibility in appropriating funds to the Board of Regents, one can argue that since the people of Montana adopted as a state goal in Article X, section 1(1), of the 1972 Constitution "to establish a system of education which will develop the full educational potential of each person", the Legislature may be expected to provide some type of state funding for each level of the state's public education system. However, unlike language found in Article

X, section 1(3), which specifically requires the Legislature to "fund and distribute in an equitable manner to the school districts *the state's share of the cost of the basic elementary and secondary school system*", there is no mandate that the Legislature provide the University System with any particular level of funding. Once the Legislature has protected the proceeds from the school lands granted by the United States as a condition of statehood as required by Article X, sections 2 and 3, of the Montana Constitution, the Legislature is not under any legal obligation to fund the University System with any particular amount from the general fund.

However, should the Legislature elect to appropriate public state or federal money to the University System, it may do so using any method, including line item appropriations, so long as the appropriation and any condition comply with the guidelines adopted by the Montana Supreme Court in Board of Regents. Acknowledging that there was not always a clear distinction between the powers of the Board of Regents and the Legislature, the Court provided the following guidelines that the Legislature must consider in the appropriation process:

> **(1) The Board of Regents is subject to the Legislature's appropriation power and public policy, but the Legislature cannot do indirectly through the means of line item appropriations and conditions what is impermissible for it to do directly.**

Line item appropriations have been recognized by the Court as vital to the legislative decisionmaking process involved in providing a balanced budget, in providing for strict accountability, in fulfilling the constitutionally required audit responsibilities, and in ensuring that the State Board of Education comply with the constitutional mandate to submit unified budget requests. However, line item appropriations become constitutionally impermissible when the authority of the Board of Regents to "supervise, coordinate, manage and control the university system" is infringed by legislative control over expenditures.

> **(2) The Legislative appropriation power extends beyond the general fund and encompasses all those public operating funds of state government, but does not extend to private funds received by state government that are restricted by law, trust agreement, or contract.**

The Legislature's authority to "appropriate" cannot be confused with its constitutional responsibility to strictly account for all revenue and expenditures. To ensure strict accountability as required by the Constitution and to enable the state's financial records to accurately reflect

governmental revenue and expenditures and when it is determined to be in the "best financial interest of the state" under section 17-6-105(7), MCA, state agencies and institutions, including the Board of Regents, are required to deposit all money received to the credit of the State Treasurer rather than in a private bank. As a result, some private money received by the Board is currently deposited in state treasury for auditing and accounting purposes. However, the power of the Legislature to ensure strict accountability of all state funds cannot be used as a "bootstrapping device" to gain legislative control over private money. The fact that private money, such as tuition, student fees, or foundation donations, is deposited into the state treasury does not "convert" the money from private to public funds that are subject to the appropriation power of the Legislature. In other words, the Legislature cannot appropriate money over which it has no constitutional authority.

(3) The Legislature may, within reason, attach conditions to University System appropriations that, if accepted by the Board of Regents, bind them to the conditions.

Under this guideline, the key phrase is "within reason". The courts have sustained conditions that require, on penalty of losing part of the appropriation, such things as annual reports to the Governor, fair and equitable distribution of an appropriation among university departments, and loyalty oaths from teachers and that subject nonteaching employees to workers' compensation laws. On the other hand, as supported by the Court in Board of Regents, a Legislature cannot "condition" money to require that a university move a department or limit salary increases and cannot attempt to *directly* control the amount of tuition charged for attendance. As noted by the Court in Board of Regents, the problem of delineating the area forbidden to the Legislature in conditioning appropriations to the University System is not easily resolved and, arguably, any decision regarding appropriations affects the Board of Regents' management of the University System to some degree. As a result, the Court stated that *each appropriation condition must be individually scrutinized to determine its propriety.* The fact that the Legislature may propose numerous conditions and require blanket compliance does not in itself infringe upon the Board's constitutional powers.

In conclusion, under the 1972 Montana Constitution, the Board of Regents has "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system". However, those constitutional powers do not exist in a vacuum, but must instead be

harmonized with the Legislature's constitutional power to appropriate, set public policy, and ensure strict accountability of all state revenue and expenditures. Moreover, the problem in identifying and deciphering constitutional authority is not limited to the Legislature and the Board of Regents. Currently, the courts are addressing whether the authority over state school lands constitutionally lies with the Board of Regents or the Board of Land Commissioners.

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ENDNOTES

1. "Voters Wisely Reject Proposed Constitutional Amendment 30 To Eliminate The Montana Board of Regents", Aronofsky, 58 Mont. L. Rev. 333, 347 (1997).

2. Ibid.

3. See Sec. 7, p. 159, L. 1893; Sec. 6, p. 174, L. 1893; Sec. 7, p. 175, L. 1893; and Sec. 12, p. 176, L. 1893.

4. Section 17, Montana Enabling Act, provided:

> To the state of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for state normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

5. See Sec. 1, p. 171, L. 1893; Sec. 1, p. 176, L. 1893; and Sec. 1, p. 180, L. 1893.

6. Aronofsky, supra, at p. 349.

7. See Sec. 1, p. 173, L. 1893.

8. See Secs. 1 and 2, Ch. 31, L. 1911, establishing the law school as a department of the state university in Missoula; Secs. 1 and 2, Ch. 131, L. 1913, establishing the forestry school as a department of the state university in Missoula.

9. See Aronofsky, supra, at p. 352.

10. Ibid.

11. Aronofsky, supra, at pp. 354-355.

12. Ibid., p. 355.

13. Ibid.

14. Aronofsky, supra, at p. 356.

15. Ibid.

16. Aronofsky, supra, at p. 360.

17. Ibid., p. 361.

18. Aronofsky, supra, at pp. 350-354, citing Edward B. Chenette, "The Montana State Board of Education: A Study of Higher Education in Conflict, 1884-1959 (1972) (unpublished Ed.D. dissertation, University of Montana) (on file with the University of Montana Library).

19. Ibid., p. 361.

20. Ibid., p. 365, citing Committee on Education and Public Lands, Montana Constitutional Convention, IX Transcripts 6473 (1972) (unpublished version). See also, Schaefer, "The Legal Status of the Montana University System Under the New Montana Constitution", 35 Mont. L. Rev. 189 (1974).

21. Schaefer, "The Legal Status of the Montana University System Under the New Montana Constitution", 35 Mont. L. Rev. 189, 195-197 (1974) .

22. Ibid, p. 198.

23. Article X, section 9, of the Montana Constitution, provides:

> **Section 9. Boards of education.** (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.
>
> (2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.
>
> (b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.
>
> (c) The board shall appoint a commissioner of higher education and prescribe his term and duties.
>
> (d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.
>
> (3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

24. Section X, section 9(3)(a), Montana Constitution, provides:

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

25. See, for example, House Bill No. 21, Ch. 344, L. 1973; House Bill No. 363, Ch. 397, L. 1973.

26. State ex rel. Haynes v. District Court, 106 Mont. 470, 476, 78 P.2d 937 (1938). See also State ex rel. Bonner v. Dixon, 59 Mont. 58, 195 P. 841 (1921); State ex rel. Toomey v. Board of Examiners, 74 Mont. 1, 238 P. 316 (1925).

27. Article VIII, section 14, Montana Constitution, provides:

Section 14. Prohibited payments. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

28. See State ex rel. Bonner v. Dixon, 59 Mont. 58, 195 P. 841, 845 (1921). See also State ex rel. Tipton v. Erickson, 93 Mont. 466, 19 P.2d 227, 229 (1933) (holding that an appropriation is an Act by which a named sum of money is set apart in the treasury and devoted to the payment of particular claims or demands).

29. See Board of Regents, supra, at pp. 449-450.

30. 168 Mont. 470, 543 P.2d 1317 (1975).

31. 168 Mont. 433, 543 P.2d 1323 (1975).

32. Ibid., p. 442.

33. Ibid., pp. 442-443.

34. Ibid., p. 444.

35. Legislative Finance Committee, supra, at p. 480.

36. Ibid., p. 477.

37. Board of Regents, supra, at p. 446.

38. Ibid.

39. Ibid., p. 452.

40. Ibid.

41. Ibid., p. 449.

42. Ibid., p. 450.

43. Ibid., p. 451.

44. Ibid.

45. Board of Regents, supra, at p. 453.

46. Ibid., p. 454.

47. See 36 A.G. Op. 76 (1976).

48. Ibid., pp. 476-477.

49. Ibid.

at the bunkhouse?" "And whatever happened to Sam (Akins)?" "Do you know where Sam and Steve Akins are now?" On each occasion defendant's counsel objected and was sustained before the witness answered.

Following conviction the trial judge denied defendant's motion for a new trial. We consider such conduct to fall far short of reversible error, particularly where the trial judge did not consider it significant enough to warrant a new trial. The guilt of defendant to the crimes charged was clear. It was common knowledge that the two Akins were killed at the same time. The jury was instructed:

"In your deliberations you will only consider the testimony of the witnesses upon the witness stand and such exhibits as have been admitted in evidence. No juror shall allow himself to be influenced by anything which he may have seen or read outside of the evidence and exhibits received by the Court during the course of this trial."

A measure of the lack of significance of this alleged error is found in the failure of the defendant to move for a mistrial, submit an additional cautionary instruction, request the court to admonish the county attorney in the presence of the jury, or take any further corrective action.

For the foregoing reasons, we affirm the judgment of conviction and denial of defendant's motion for a new trial.

MR. CHIEF JUSTICE JAMES T. HARRISON and MR. JUSTICES CASTLES, DALY and JOHN C. HARRISON concur.

BOARD OF REGENTS OF HIGHER EDUCATION OF THE STATE OF MONTANA, PLAINTIFF, v. THOMAS L. JUDGE, GOVERNOR OF THE STATE OF MONTANA, DEFENDANT, AND LEGISLATIVE FINANCE COMMITTEE OF THE MONTANA LEGISLATIVE ASSEMBLY, INTERVENORS.

No. 13069.
Submitted Sept. 10, 1975.
Decided Dec. 12, 1975.
543 P.2d 1323.

COLLEGES AND UNIVERSITIES — CONSTITUTIONAL LAW — STATES.

1. **Colleges and Universities.**
   Statute providing no state agency shall expend in excess of appropriation except under authority of budget amendment approved by Legislative Finance Committee was not in conflict with statute giving Board of Regents of Higher Education authority for budgetary amendments whenever certain funds became available unless otherwise provided by law. Laws 1975, c. 510; H.B. 271.
2. **Constitutional Law.**
   Constitution must receive broad and liberal interpretation consistent with purpose of framers and People in adopting it.
3. **Constitutional Law.**
   State Constitution, unlike the United States Constitution, is prohibition upon legislative power, rather than grant of power.
4. **Constitutional Law.**
   All provisions of constitution bearing upon same subject matter are to receive appropriate attention and be construed together.
5. **Constitutional Law.**
   Constitutionality of legislative enactment is prima facie presumed, and every intendment in its favor will be made unless its unconstitutionality appears beyond reasonable doubt.
6. **States.**
   Legislative appropriation power extends beyond general funds and encompasses all public operating funds of state government; however, power to appropriate does not extend to private funds received by state government which are restricted by law, trust agreement or contract, overruling State ex rel. Bonner v. Dixon, 59 Mont. 58, 195 P. 841 and State Aeronautics Commission v. Board of Examiners, 121 Mont. 402, 194 P.2d 633 to extent they are inconsistent. Const.1972, art. 6, § 9; art. 8, §§ 9, 12; R.C.M.1947, §§ 79-409, 79-409 to 79-416, 79-410, 79-415; Const.1889, art. 21, § 1 et seq.
7. **States.**
   Statute providing that federal and private revenue fund consists of all expendible monies deposited in state treasury from federal or private sources, including trust income, could not be used as basis for legislative control over expenditures of types of private money enumerated therein and was invalid to extent it could be so read. R.C.M.1947, § 79-410.

8. **States.**
General appropriation contained in statute appropriating additional money to university system was limited to public operating funds of state government and could not extend to private funds received by state government which were restricted by law, trust agreement or contract. Laws 1975, c. 510; H.B. 271.

9. **States.**
State trust and legacy fund established by constitution was fund outside appropriation process; overruling State ex rel. Bonner v. Dixon, 59 Mont. 58, 195 P. 841 and State Aeronautics Commission v. Board of Examiners, 121 Mont. 402, 194 P.2d 633 to the extent they are inconsistent. Const.1889, art. 21, § 1 et seq.

10. **Constitutional Law—States.**
Statute giving Legislative Finance Committee power to approve budget amendments constituted unconstitutional delegation of legislative power to Legislative Finance Committee. Laws 1975, c. 510; H.B. 271.

11. **Colleges and Universities.**
Legislative control of higher education through appropriation process remains; Board of Regents of Higher Education is constitutional body in state government subject to legislature's power to appropriate and make public policy of state. Laws 1975, c. 510; H.B. 271; Const.1889, art. 21, § 1 et seq.

12. **States.**
Legislature has power to make appropriations to the university system for biennium through line item system. Const.1972, art. 5, § 10; art. 8, §§ 9, 12; art. 10, § 9(1); Laws 1975, c. 510; H.B. 271, § 12.

13. **States.**
Legislature cannot do indirectly through means of line item appropriations and conditions what is impermissible for it to do directly.

14. **Constitutional Law—States.**
Line item appropriations by legislature become constitutionally impermissible when authority of Board of Regents of Higher Education to supervise, coordinate, manage and control university system is infringed by legislative control over expenditures. Const.1889, art. 11, § 11, art. 21, § 1 et seq.; Const.1972, art. 3, § 1; art. 5, § 1; art. 8, §§ 9, 12; art. 10, § 9; R.C.M.1947, §§ 79-409 to 79-416; Laws 1975, c. 510; H.B. 271.

15. **States.**
Budget items and corresponding line items of statute appropriating monies for university system for biennium were reasonably related to purpose of providing funds for necessary services and other responsibilities of legislature. Laws 1975, c. 510; H.B. 271.

16. **Constitutional Law—States.**
Conditioning of appropriations to university system by 1975 legislature and summary procedure for compliance were proper exercises of legislature's powers to extent that such conditions did not infringe on constitutional powers granted Board of Regents of Higher Education. Laws 1975, c. 510; H.B. 271.

17. **Constitutional Law.**
Legislative conditions imposed on university system for appropriations must be individually scrutinized to determine their propriety; fact that there are numerous conditions and requirement of blanket compliance does not, in itself, infringe upon constitutional powers of Board of Regents of Higher Education. Laws 1975, c. 510; H.B. 271.

18. **States.**
To extent that certification requirement of statute appropriating monies for university system attempted to exert any control over private monies restricted by law, trust agreement, or contract which were beyond appropriation power or to grant any discretion over such funds to department of administration, it was unconstitutional. Laws 1975, c. 510; H.B. 271, § 12(4, 6).

19. **Constitutional Law—States.**
Section of statute providing limitation on salaries to be paid presidents of units of university system and commissioner of higher education specifically denied Board of Regents of Higher Education power to function effectively by setting its own personnel policies and determining its own priorities, and thus limitation was unconstitutional to condition appropriations. Laws 1975, c. 510; H.B. 271, § 12(4, 6).

Original proceeding seeking a declaratory judgment.

See C.J.S., States, § 163.

The Board of Regents of Higher Education brought original action for a declaratory judgment seeking rulings on constitutionality of statutes appropriating monies for university system for biennium and providing for a Legislative Finance Committee to approve budget amendments. The Supreme Court held that power to approve budget amendments, vested in Legislative Finance Committee, constituted an unconstitutional delegation of legislative power; that conditioning of university system appropriations and summary procedure for compliance with conditions were proper exercise of legislature's appropriation power to extent that conditions did not infringe on constitutional powers granted the Regents; that to extent certification requirement attempted to exert any control over private monies restricted by law, trust agreement, or contract or to grant any discretion over such funds to department of administration, it was unconstitutional; and that certification condition limiting salary increases for presidents of units of university system was unconstitutional infringement on powers of Regents.

Judgment entered.

Datsopoulos & MacDonald, Missoula, Milton Datsopoulos, argued, Missoula, for plaintiff.

Robert L. Woodahl, Atty. Gen., Helena, John P. Atkins and Lon J. Maxwell, argued, Asst. Atty. Gen., Helena, for defendant.

John W. Northey, argued, Helena, for intervenors.

Berg, Angel, Andriolo & Morgan, Bozeman, Gregory O. Morgan, argued, Bozeman, for intervenors amicus curiae.

MR. JUSTICE CASTLES delivered the Opinion of the Court.

This is an original proceeding for a declaratory judgment brought by the Board of Regents of Higher Education of the State of Montana against the Governor of the State. The Board of Regents seeks definitive rulings on the constitutionality of two bills passed during the 1975 legislative session and signed into law by the Governor. House Bill 271 appropriates monies to the university system for the biennium. Senate Bill 401 provides for a legislative finance committee to approve budget amendments. More will be said about these two bills later in this opinion.

The Board of Regents, hereinafter referred to as the Regents, sought original jurisdiction in this Court. This Court set the matter for adversary hearing. Hearing was had. Defendant Governor, hereinafter referred to as Governor, moved to dismiss on procedural grounds. The motion was denied. The Legislative Finance Committee and the Legislative Audit Committee of the Montana Legislative Assembly moved to intervene. Hereinafter these committees will be referred to in the singular as the Finance Committee. Such intervention was granted, and no challenge is made to the status of legislative committees as party litigants. The Associated Students of Montana State University and University of Montana were allowed to submit a brief and appear as amicus curiae.

By order this Court accepted original jurisdiction on the basis of the emergency nature of the controversy and set a prehearing conference pursuant to Rule 28, M.R.App.Civ.P., to consider simplification of the issues. Thereafter the Court

directed the Governor and his agents to refrain from withholding payments on claims and warrants by the university system until further order of this Court.

Following the prehearing conference this Court ordered in part:

"I. The Forty-Fourth Legislature of the State of Montana passed House Bill 271 which purports to appropriate money to the University System for the biennium. During the same session, the Legislature passed Senate Bill 401 which provides for a legislative finance committee to approve budget amendments. Pursuant to House Bill 271, the budget director declared the appropriation to the University System void in the absence of a letter certifying compliance with the provisions of the bill. The Board of Regents declined to certify and brought this action for disposition of the issues involved.

"II. The issues to be resolved in this action are as follows: 1) whether Section 1(3) of House Bill 271, in light of the provisions of Senate Bill 401 is an unconstitutional infringement on the powers and duties of the Board of Regents; 2) whether (a) the certification requirement contained in the origination clause of Section 12 of House Bill 271 is unconstitutional as an improper legislative infringement on the management authority of the Board of Regents, and (b) whether Section 12(6) of House Bill 271 is unconstitutional as a direct invasion of the management prerogative granted to the Board of Regents by Article X, Section 9 of the Montana Constitution."

The pertinent parts of the two enactments are:

HOUSE BILL 271.

"Section 1. For the purpose of this act, unless otherwise stated:

"* * *

"(3) 'Approved budget amendment' means approval by the board of regents unless otherwise provided by law, of a request to:

"(a) obtain financing for new or expanded programs from

funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund; or

"(b) transfer not more than fifteen percent (15%) of any single university system unit's appropriations, including general fund appropriation between units and transfer appropriations between programs within a university system unit; or

"(c) expend remaining balances of the first fiscal year of the biennial appropriations, including general fund appropriations, during the second fiscal year of the biennium.

"* * *

"Section 12. The provisions set forth in this section are limitations on the appropriations made in this act. It is the purpose of the legislature in enacting *this bill only to appropriate funds and to restrict and limit by its provisions the amount and conditions under which the appropriations can be expended.* Except as otherwise provided in this act, the expenditures of appropriations are hereby contingent upon the board of regents certifying to the budget director that the university units shall comply completely with the following general and specific provisions: * * *

"(4) All moneys collected or received by university system units subject to this act from any source whatsoever, including federal grants for research and operations, and any moneys received from a foundation shall be deposited in state treasury pursuant to the provisions of Title 79, R.C.M.1947, except that the department of administration may, pursuant to section 79-603, R.C.M.1947, permit any university system unit subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury, provided that the anonymity of private foundation donors shall be maintained and that private donations shall not be used as an offset to general fund appropriations.

"* * *

"(6) Salary increases for presidents of units of the university system and for the commissioner of higher education shall not exceed five percent (5%) each year of the biennium using the respective fiscal year 74-75 salaries previously approved by the regents as the basis for determining such increases.

"In the absence of such certification of compliance, the appropriations in this act are null and void.

"The regents shall grant classified university employees salaries in accord with House Joint Resolution, 37, forty-fourth legislature." (Emphasis supplied.)

House Bill 271 was amended by the Forty-Fourth Legislature in its House Bill No. 1 (Special Session) by adding Section 13 to H.B. 271:

"Section 13. In addition to the appropriations contained in this act, all other monies received from sources other than the general fund and which were not available for consideration by the legislature are hereby appropriated. Such monies may be made available for expenditure only by a budget amendment approved by the legislative finance committee."

SENATE BILL 401:

"Section 1. * * * Definitions. In this act: * * *

"(2) 'Budget amendment' means a request submitted through the budget director to the committee for executive branch agencies to expend funds in excess of those appropriated by the legislature..

"Section 2. * * * Approval of budget amendments. All budget amendments for state agencies must be submitted through the budget director to the committee. No state agency shall expend in excess of the appropriation except under authority of a budget amendment approved by the committee. The committee shall approve, with or without modification, or disapprove, each proposed budget amendment of any state agency."

The Governor does not oppose the Regents with respect to the legislative budget process put forth in Issue No. 1 (but

see Governor's stand in companion case, Cause No. 13201, *Governor v. Legislative Finance Committee*, 543 P.2d 1317). The Finance Committee does oppose the Regents with respect to the legislative budget process in Issue No. 1. Amicus Curiae support the Regents.

Prior to discussing Issue No. 1, it will be helpful to give some background. House Bill 271 appropriates money to the university system for the biennium by various line items from various state operating funds. The Commissioner of Higher Education, the University of Montana, Montana State University, and the various other college units are each appropriated certain funds.

For example, the University of Montana is appropriated $17,782,106.00 for the year ending June 30, 1976, in ten line items:

Instruction	$10,114,000
Research	176,768
Public Service	131,718
Academic Support	1,737,215
Student Services	886,183
Institutional support	1,730,230
Operation & maintenance of plant	1,941,316
Forest Experiment Station	241,591
Scholarships and fellowships	525,000
Malmstrom Air Force Base instruction	298,085
Total	$17,782,106

From the general fund	$ 9,808,239
From the earmarked revenue fund	
02106 University millage ERA	3,041,786
02650 U.M. Student fee ERA	4,336,999
From the federal and private revenue fund	
04308 UM interest and income FPRA	75,000

04515 UM federal program FPRA	346,944
Social Rehabilitation Services transfer	173,138
Total	$17,782,106

H.B. 271 provides for budget amendment by the Regents whenever funds become available from sources outside the general fund for new or expanded programs, or in transfers of not more than 15% of any appropriation of a single unit of the university system to another unit, and expending balances remaining at the end of the first fiscal year during the second fiscal year.

Additional monies are appropriated by section 3 of H.B. 1, (Special Session) Laws of 1975, which adds an additional section to H.B. 271, Section 13 as previously quoted. The contingency of additional appropriations by budget amendments is taken from the Regents by definition in H.B. 271, Section 1(3), "'Approved budget amendment' means approval by the board of regents *unless otherwise provided by law* * * *." (Emphasis supplied.)

[1] S.B. 401 provides that no state agency shall expend in excess of an appropriation except under authority of a budget amendment approved by the legislative finance committee. Thus both by the section 13 amendment in the Special Session to H.B. 271 and by S.B. 401, the authority for budget amendments is in the legislative finance committee.

Thus, the question and conflict arises between the Regents and the legislative finance committee.

The Regents urge that line item appropriations of general fund monies by the legislature to the Board of Regents infringe on the authority of the Board granted by the Constitution of Montana 1972. Their position is hinged on this language contained in Article X, Section 9, 1972 Montana Constitution:

"(2)(a) The *government and control* of the Montana university system is vested in a board of regents of higher edu-

cation which shall have *full power, responsibility, and authority to supervise, coordinate, manage and control* the Montana university system * * *." (Emphasis supplied.)

The Regents in part state their position: "This provision [Article X, Section 9(2)(a)] clearly indicates the broad scope of authority vested by the framers in the Board of Regents. The grant of power is clear and unambiguous. * * * Given their plain meaning, the words * * * grant a high degree of autonomy to the Board of Regents."

During oral argument, in response to a question from the bench, counsel went so far as to state that indeed the university system and its Board of Regents was a fourth branch of government. In support of that construction, the Regents note particular changes in the 1972 constitutional provision which, they insist, are indicative of the intent of the framers to vest complete control in the Regents to the exclusion of legislative and executive bodies.

First, the 1889 Constitution vested control and supervision in the state board of education, but limited its powers to those which "shall be prescribed and regulated by law.", Art. XI, Sec. 11. Thus, the Regents urge that a board regulated by law is clearly under the control of the law-making body to some extent. The qualifying phrase is absent in the 1972 Montana Constitution, indicating that the powers of the Regents are not to be prescribed by the legislature. Second, the language of the new provision is much stronger and more comprehensive than that of the old provision. Under the 1889 Constitution, the board of education was given "general control and supervision" of the university system; under the 1972 Montana Constitution, the Board of Regents was given "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system * * *."

At this point we observe that if Article X, Section 9, 1972 Montana Constitution, was read literally without reference to the rest of the Constitution, the Regents' argument and

position would be correct; but, as will be hereinafter developed, the Constitution is not so read.

Article III, Section 1, 1972 Montana Constitution, reads:

"The power of the government of this state is divided into *three distinct branches*— legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one *branch* shall exercise any power properly belonging to either of the others, *except as in this constitution expressly directed or permitted.* (Emphasis supplied.)

Article V, Section 1, 1972 Montana Constitution, reads:

"*The legislative power is vested in a legislature* consisting of a senate and house of representatives. The people reserve to themselves the powers of initiative and referendum." (Emphasis supplied.)

Article VIII, Section 12, 1972 Montana Constitution, reads:

"*The legislature shall by law insure strict accountability of all revenue received and money spent by the state* and counties, cities, towns, and all other local government entities." (Emphasis supplied.)

It is the opinion of this Court that these provisions of the 1972 Montana Constitution and Article X, Section 9, should stand together. To be sure, that constitutional provision, like most, is couched in broad language, but it must not be read or construed in isolation. To aid our analysis of this section we rely on several rules of construction used previously by this Court.

[2] First, *Arps v. State Highway Commission*, 90 Mont. 152, 160, 300 P. 549, 553, provides:

"* * * the Constitution must receive a broad and liberal interpretation consistent with the purpose of the framers and the people in adopting it, that it may serve the needs of a growing state; 'the proper interpretation of any constitutional provision requires us to remember that it is a part of the organic law—organic not only in the sense that it is funda-

mental, but also in the sense that it is a living thing designed to meet the needs of a progressive society, amid all the detail changes to which a progressive society is subject.' *State ex rel. Fenner v. Keating*, 53 Mont. 371, 163 P. 1156, 1158."

[3, 4] Next, this rule stated in *Cottingham v. State Board of Examiners*, 134 Mont. 1, 11, 17, 328 P.2d 907, 912:

"It has also frequently been stated that the Montana Constitution, unlike the Constitution of our United States, is a prohibition upon legislative power, rather than a grant of power. [Citing cases]"

Also valuable are these rules from *Cottingham:*

"'A constitution, or provision thereof, *should receive a reasonable and practical intemrpretation in accord with common sense.*' (16 C.J.S. Constitutional Law § 14, pp. 66, 69. * * *

"*All of the provisions* of the Constition bearing upon the same subject matter *are to receive appropriate attention and be construed together.*" (Emphasis supplied.)

[5] Since our construction will determine the validity or invalidity of legislative acts, citing the presumption of constitutionality and burden on the party seeking to overcome the presumption stated in *State ex rel. Mills v. Dixon*, 66 Mont. 76, 84, 213 P. 227, 229, is also appropriate:

"* * * the constitutionality of a legislative enactment is *prima facie* presumed, and every intendment in its favor will be made unless its unconstitutionality appears beyond a reasonable doubt."

Our task then is to harmonize in a practical manner the constitutional power of the legislature to appropriate with the constitutional power of the Regents to supervise, coordinate, manage and control the university system. At the outset we note that there is not always a clear distinction between these powers and therefore limit our ruling here to these specific legislative enactments.

[6] It is also necessary when speaking to issues arising out of the appropriation process to clarify our conception of

the funds subject to that power. Previous rulings of this Court have limited the scope of appropriation to the general fund. *State ex rel. Bonner v. Dixon*, 59 Mont. 58, 76, 195 P. 841; *State Aeronautics Commission v. Board of Examiners*, 121 Mont. 402, 410, 194 P.2d 633, and cases cited therein. Statutory changes, as well as the 1972 Montana Constitution, cause us to reexamine that definition at this time.

In 1963 the legislature enacted the "Treasury Fund Structure Act", section 79-409, R.C.M.1947, with a purpose:

"* * * to make possible the full utilization of modern accounting methods, *to provide the legislative assembly with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect governmental costs and revenues.*" (Emphasis added.)

We note here that the structure of the 1972 Constitutional provisions have changed to a considerable extent the connotation to be placed on the word "control" as used in section 79-409.

Section 79-410 of the Act provides for these funds in the state treasury: 1) General fund.)2 Earmarked revenue fund. 3) Sinking fund. 4) Federal and private revenue fund. 5) Federal and private grant clearance fund. 6) Bond proceeds and insurance clearance fund. 7) Revolving fund. 8) Trust and legacy fund. 9) Agency fund.

Then section 79-415 states in part:

"(1) Moneys deposited in the general fund, the earmarked revenue fund, and the federal and private revenue fund, with the exception of trust income and refunds authorized in subsection (3) of this act, *shall be paid out of the treasury only on appropriation made by law.* * * *" (Emphasis supplied.)

The 1972 Constitution also broadens the scope of the appropriation power. Article VI, Section 9, commands the governor to submit a budget to the legislature "setting forth in detail *for all operating funds* the proposed expenditures and esti-

mated revenue of the state". (Emphasis supplied.)

Article VIII, Section 9, 1972 Montana Constitution states:

"Appropriations by the legislature shall not exceed anticipated revenue."

Section 12 of the same Article provides:

"The legislature *shall by law* insure strict accountability *of all revenue received and money spent by the state* and counties, cities, towns, and all other local governmental entities." (Emphasis added.)

Thus the legislative appropriation power now extends beyond the general fund and encompasses all those public operating funds of state government. Prior to the 1972 Constitution, the Treasury Fund Structure Act, sections 79-409 through 79-416, R.C.M.1947, provided for the nine funds heretofore listed.

[7, 8] However we emphasize that the power to appropriate does not extend to private funds received by state government which are restricted by law, trust agreement or contract. Accordingly, we limit subsection (4) of section 79-410 which provides:

"(4) Federal and private revenue fund. The federal and private revenue fund *consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income,* which are to be used for the operation of state government." (Emphasis supplied.)

This provision, in view of our conception of the appropriation power, cannot be used as a basis for legislative control over expenditures of the types of private moneys enumerated above and is invalid to the extent it may be so read. Similarly, the general appropriation contained in H.B. 1 (Special Session) is also limited to the public operating funds of state government.

[9] An example of such a fund outside the appropriation process was the Montana Trust and Legacy Fund established

by Article XXI, 1889 Montana Constitution. Therefore, to the extent they are inconsistent with this discussion of the legislature's power to appropriate, our earlier rulings in *State ex rel. Bonner v. Dixon,* supra and *State Aeronautics Commission v. Board of Examiners,* supra, are overruled.

[10] These funds—subject to the appropriation process—concern us in the Regents' challenge to the approved budget amendment requirement of Section 1(3) of H.B. 271. If the approval of budget amendments by the Finance Committee is a proper exercise of the legislative appropriation power, then the Regents as part of state government are subject to those requirements. But, as developed in this Court's opinion in the companion case, *State ex rel. Judge v. Legislative Finance Committee,* Cause #13201, 543 P.2d 1317, also decided today, the power to approve budget amendments in S.B. 401 constitutes an unconstitutional delegation of legislative power to the Finance Committee. Thus for the reasons enumerated in that opinion, the Regents' challenge to the approved budget amendment requirement of H.B. 271 succeeds.

To reach the Regents' constitutional challenge of the certification requirement in the origination clause of Section 12 of H.B. 271, we must consider the power of the legislature to make line item appropriations.

We repeat the provisions of H.B. 271:

"Section 12. The provisions set forth in this section are limitations on the appropriations made in this act. *It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions the amount and conditions under which the appropriations can be expended.* Except as otherwise provided in this act, the expenditures of appropriations are hereby contingent upon the board of regents certifying to the budget director that the university units shall comply completely with the following general and specific provisions * * *." (Emphasis supplied.)

If the legislature cannot make line item appropriations for the university system, it does not have the authority to require certification by the Regents. The position of Amicus, which was adopted by the Regents in oral argument, is that the "autonomy" and "uniqueness" of the Regents precludes line item appropriations by the legislature. However, we find no constitutional limitations or judicial interpretation of this Court to bottom such a conclusion. The Regents' assertion of autonomy based on an isolated analysis of one article of Montana's Constitution does not show a basic violation of fundamental law of this long standing legislative practice. Even the Regents' cases from other jurisdictions cited in support of this principle, two of which we discuss later, do not challenge the authority of the legislature to itemize appropriations. An early Michigan case, *Sterling v. Regents of University of Michigan*, 110 Mich. 369, 68 N.W. 253, 257, sets the precedent for regent autonomy according to the Regents, but this Court notes this discussion in the decision which illuminates the background of the constitutional provision giving the regents control over "expenditures from the university interest fund" (similar to the Montana Trust and Legacy Fund, Article XXI, 1889 Constitution):

"*It is significant* that, at the time of the adoption of the constitution, this fund constituted the sole support of the university, aside from fees which might be received from students. *The state had made no appropriations for its support, and there is nothing to indicate that any such appropriations were contemplated.*" (Emphasis supplied.)

The present Michigan Constitution grants the regents control of "expenditures from the institution's funds." Based on this provision regent autonomy recently prevailed over these legislative appropriation bills described in *Regents of University of Michigan v. State of Michigan*, 47 Mich.App. 23, 208 N.W.2d 871, 874-875:

"Furthermore a careful reading of 1972 P.A. 260 discloses

that the *Legislature has in no way abandoned its intention to substitute its judgment for that of the constitutionally created boards of control.* * * *

"Whether it be under the guise of the police power or a reporting requirement, the simple fact remains that the *legislature still is attempting* through 1972 P.A. 260 to do the same thing it sought to do through 1971 P.A. 122 and prior acts: i.e., *determine who shall teach and who shall not, who shall learn and who shall not.*" (Emphasis supplied.)

[11] Regent autonomy has not been asserted over the bare legislative power to appropriate in the above instances. That power, by implication in these cases and expressly in others cited by the Regents, is secure even in Michigan with its strong constitutional provision and long judicial recognition of autonomy of the regents. We recognize here that while Montana's Constitution is not as explicit or broad as that of Michigan, the principle of regent independence was definitely intended by the drafters of the 1972 Montana Constitution. At the same time, just as in Michigan, legislative control of higher education through the appropriation process remains. The Regents are a constitutional body in Montana government subject to the power to appropriate and the public policy of this state. For a discussion of the impact of the 1972 constitutional provision see: Schaefer, The Legal Status of the Montana University System under the New Montana Constitution, 35 Mont. Law Review 189.

[12] Going hand in hand with the power to appropriate has been legislative exercise of control over expenditures through itemization. Historically the English Parliament during the reign of William in the seventeenth century appropriated sums for particular purposes with penalties for disobedience. See 4 Thomson, A Constitutional History of England—1642-1801, p. 206. After two years of lump sum appropriations the United States Congress in 1793 began to itemize expenditures in its appropriation acts. Act of February 28,

1793, Ch. 18, § 1, 1 Stat. 325. In Montana too, itemization of appropriations is well established. Laws of Montana, Second Session 1891, pp. 129, 130. In addition to these historical bases, itemization of appropriations is vital to the legislative decision-making process involved in providing a balanced budget (Article VIII, Section 9), in providing a system of strict accountability (Article VIII, Section 12), and in fulfilling the audit responsibility of Article V, Section 10. Also, Article X, Section 9(1) provides that:

"It [state board of education] shall submit unified budget requests."

These constitutional bases justify the legislature's use of line items in its appropriations.

[13-15] However, the legislature cannot do indirectly through the means of line item appropriations and conditions what is impermissible for it to do directly. Line item appropriations become constitutionally impermissible when the authority of the Regents to supervise, coordinate, manage and control the university system is infringed by legislative control over expenditures. On their face, the budget items and corresponding line items of H.B. 271 are reasonably related to the purpose of providing funds for necessary services and the other responsibilities of the legislature enumerated above.

Within these parameters we now consider the certification requirements of Section 12, House Bill 271.

That section, as previously quoted, requires the Regents to certify full compliance to certain conditions to the budget director. Without such certification of compliance the appropriations in the bill are null and void. At the same time the Regents concede that the conditioning of appropriations has been a traditional and recognized legislative prerogative. Despite this, the Regents contend that compliance with numerous conditions erodes their authority granted them by the Constitution. But, the Regents' argument sheds little light on

specific intrusions; hence our ruling here is necessarily limited due to the facts presented us.

We think this description adopted by Minnesota in *State ex rel. U. of Minnesota v. Chase*, 175 Minn. 259, 220 N.W. 951, 955 to be a realistic approach to the issue of the propriety of legislative conditions to university system appropriations:

"* * * At the one extreme, the Legislature has no power to make effective, in the form of a law, a mere direction of academic policy or administration. *At the other extreme it has the undoubted right within reason to condition appropriations as it sees fit. 'In such case the regents may accept or reject such appropriation.* * * *If they accept, the conditions are binding upon them.'*" (Emphasis supplied.)

[16, 17] As noted above, the Regents are not mentioned in either Article III, Section 1, which creates the three branches of government, nor in Article V, which limits the powers of the legislature. Similarly, the legislature is not mentioned in Article X, Section 9(2), which entrusts the government and control of the university system to the Regents. By no rule of construction then can the powers of one be exercised or encroached upon by the other. In other words, the conditioning of university system appropriations by the 1975 Montana legislature and the summary procedure for compliance were proper exercises of its appropriation powers to the extent the conditions do not infringe on the constitutional powers granted the Regents. This means the conditions must be *individually scrutinized* to determine their propriety. The fact that there are numerous conditions and a requirement of blanket compliance does not in itself infringe upon the Regents' constitutional powers.

Nevertheless we cannot neglect the fact that certain of the certification requirements do exceed the limits to the exercise of the appropriation power which we have outlined above. We note particularly these provisions of Section 12, H.B. 271:

"(4) *All moneys* collected or received by university system units subject to this act *from any source* whotsoever, including federal grants for research and operations, *and any moneys received from a foundation* shall be deposited in the state treasury pursuant to the provisions of Title 79 R.C.M. 1947, *except that the department of administration may, pursuant to section* 79-603, *R.C.M.*1947, *permit any university system unit subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury, provided that the anonymity of private foundation donors shall be maintained and that private donations shall not be used as an offset to general fund appropriations.*" (Emphasis supplied.)

[18] Based on our earlier discussion of the legislative appropriation power, certification cannot be used as a bootstrapping device to gain legislative control over private moneys. As noted heretofore, private moneys restricted by law, trust agreement, or contract are beyond the appropriation power. To the extent then that the certification requirement of Section 12(4) attempts to exert any control over such private moneys or to grant any discretion over such funds to the department of administration, it is unconstitutional.

[19] The Regents' challenge to Section 12(6) of House Bill 271 on its face, in the final issue presented to this Court, provides us an opportunity to more fully define the limits within which the legislature may condition appropriations to the university system. That section provides:

"(6) *Salary increases for presidents of units of the university system and for the commissioner of higher education* shall not exceed five percent (5%) each year of the biennium using the respective fiscal year 74-75 salaries previously approved by the regents as the basis for determining such increases." (Emphasis supplied.)

The question presented is whether this condition is a direction of academic policy or administration by the legislature. The Regents argue this condition represents an effort to abrogate the powers and prerogatives granted expressly and absolutely to them by the 1972 Montana Constitution. The Governor and Finance Committee assert the condition is a proper exercise of the legislative appropriation power.

The problem of delineating the area forbidden to the legislature in conditioning appropriations of the university system is not easily resolved, as was noted by the Michigan Court of Appeals in *Regents of University of Michigan v. State*, 47 Mich. App. 23, 208 N.W.2d 871, 877, quoting from 55 Mich. L.Rev. 728, 729:

"'While it must be recognized that the legislature's power to make appropriations to a constitutional university does not include and is separate from the power to control the affairs of such a university, the legislature can within reason attach conditions to its university appropriations. If a constitutional university accepts such conditioned funds, it is then bound by the conditions. *There are not many decisions in this area, however, so the line between conditions the legislature can validly attach and those it cannot has not been drawn in a distinct fashion.* Conditions which require the university to follow prescribed business and accounting procedures have generally been found to be valid. The courts have also sustained conditions which require, on penalty of losing part of the appropriation, annual reports to the governor, and fair and equitable distribution of an appropriation among the departments of the university or maintenance of university departments. It has also been held that the legislature can properly make non-teaching employees subject to the state's workmen's compensation law, and can require loyalty oaths by the teachers. On the other side of the line, a condition that the university move a certain department of the school has been held to be invalidly attached, an attempt to limit the amount of funds that can be spent for a given department is likewise an invalid condition. It is clear that limits should be placed on the use of the conditioned appropriation, for

without such limits the legislature could use the conditioned appropriation to strip the university of its constitutional authority.'" (Emphasis supplied.)

Clearly any decision with respect to appropriations affects the management of the university system to some degree. We assume the 1972 Constitutional Convention was aware of this fact when it drafted Article V. That Article, as was noted, does not limit the legislature's power to appropriate funds for the university system. Therefore, we look to the impact of the appropriation condition on the management and control exercised by the Regents.

Returning now to the restrictions contained in Section 12, we note no legislative explanation of the breadth of the restrictions. Neither is there any provision for the Regents to object. The Regents either comply or forego the funds. Seemingly minor conditions could ultimately affect academic, administrative and financial matters of substantial importance to the system.

But, control over college president salaries is not a "minor" matter. It does dictate university personnel policy. That such effect was meant need only be found in the final sentence of the bill following Section 6 which states "The regents shall grant classified university employees salaries in accord with House Joint Resolution 37, forty-fourth legislature." Such a limitation on significant expenditures indicates a complete disregard for the Regents' constitutional power.

Inherent in the constitutional provision granting the Regents their power is the realization that the Board of Regents is the competent body for determining priorities in higher education. An important priority is the hiring and keeping of competent personnel. The limitation set forth in Section 12(6), H.B. 271, specifically denies the Regents the power to function effectively by setting its own personnel policies and determining its own priorities. The condition is, therefore, unconstitutional.

This opinion together with the companion opinion of *State ex rel. Judge v. Legislative Finance Committee*, Cause No. 13201, 543 P.2d 1317, decided today, shall constitute the declaratory judgment of this Court with regard to Issues 1) and 2) to be resolved in this action as set out in the order of this Court dated July 17, 1975.

The order of this Court dated July 2, 1975, staying further actions or proceedings by any party hereto or his agent outside the scope of this proceeding and the order dated July 7, 1975, directing the Governor and his agents, servants and employees to desist and refrain from withholding payment on warrants and claims submitted by the Montana university system, are vacated. The Regents shall have a reasonable time to complete their certification as to the other general matters contained in Section 12, H.B. 271.

MR. CHIEF JUSTICE JAMES T. HARRISON and MR. JUSTICES JOHN C. HARRISON, DALY and HASWELL concur.

STATE OF MONTANA EX REL. THOMAS L. JUDGE, GOVERNOR OF THE STATE OF MONTANA, PLAINTIFF, v. THE LEGISLATIVE FINANCE COMMITTEE AND ITS MEMBERS ET AL., DEFENDANTS.

No. 13201.
Submitted Dec. 6, 1975.
Decided Dec. 19, 1975.
543 P.2d 1317.

COURTS — DECLARATORY JUDGMENT — ESTOPPEL — STATES — CONSTITUTIONAL LAW.

1. **Courts.**
Particularly in light of Governor's concession of factual issues and fact that answers required by case would have such significant impact on operation of state government, original jurisdiction of Supreme Court was properly invoked in action brought by Governor for declaratory relief involving constitutionality of several legislative enactments establishing and empowering Legislative Finance Committee and its office of legislative fiscal analyst. R.C.M.1947, § 93-8901 et seq.; Laws 1975, cc. 448, 510; M.R.App.Civ.P., rule 17.
2. **Declaratory Judgment.**
Action for declaratory judgment as to constitutionality of several legislative enactments establishing and empowering Legislative Finance Committee and its office of legislative fiscal analyst was proper method for resolution of such controversy. R.C.M.1947, § 93-8901 et seq.; Laws 1975, cc. 448, 510.
3. **Estoppel.**
Governor was not estopped from challenging legislative enactments establishing and empowering Legislative Finance Committee on basis that he signed acts and subsequently did not legally challenge them when he had opportunity to do so, particularly in view of Governor's duty to uphold State Constitution. R.C.M.1947, § 93-8901 et seq.; Laws 1975, cc. 448, 510.
4. **States.**
Legislature could determine whether or not to release money already appropriated from source other than general fund which source had not been available for consideration by earlier session of same legislature.
5. **States.**
Nongeneral fund monies are public operating funds of state government subject to appropriation process.
6. **Constitutional Law.**
Legislature may make policy determinations and delegate to executive agency or officer duties to later implement legislature's policy determination.
7. **Constitutional Law—States.**
Statute empowering Legislative Finance Committee to approve budget amendments delegated to one of legislature's interim committees power properly exercisable only by either entire legislature or executive officer or agency, and was thus unconstitutional delegation of legislative power. Laws 1975, cc. 448, 510; Const.1972, art. 3, § 1, art. 5, § 9; art. 6, § 9.

8. **Constitutional Law.**
Where appropriation is made by legislature, discretion regarding disposition of nongeneral fund unanticipated revenues resides with executive branch.
9. **States.**
Given power of legislature to adjust and finalize legislative budget, legislature, through interim committee, may require such information from other branches of government as is reasonably necessary to form rational basis for its budget determination. Const.1972, art. 2, § 9; art. 5, §§ 1, 11; art. 6, § 9; art. 8, §§ 9, 12, 14; Laws 1975, cc. 448, 448, § 7.
10. **Constitutional Law.**
Section of statute establishing and empowering Legislative Finance Committee which required disclosure of information held by state agencies, including copy of preliminary budget, did not infringe unconstitutionally on executive branch. Laws 1975, cc. 448, 448, § 7; Const.1972, art. 2, § 9; art. 5, §§ 1, 11; art. 6, § 9; art. 8, §§ 9, 12, 14.
11. **Constitutional Law.**
Constitutionality of act of legislature must be presumed unless rebutted by proof beyond reasonable doubt.

Original proceeding seeking declaratory relief.

See C.J.S., States, § 42.

Governor brought original proceeding seeking declaratory relief as to constitutionality of several legislative enactments establishing and empowering defendant Legislative Finance Committee and its office of legislative fiscal analyst. The Supreme Court held that statute empowering Finance Committee to approve budget amendments delegated a power properly exercisable only by either entire legislature or executive officer or agency and thus was an unconstitutional delegation of legislative power; and that section of statute requiring disclosure of information held by state agencies, including copy of preliminary budget, was not improper unconstitutional infringement upon the executive branch.

Judgment entered.

Larry H. Elison and Patrick E. Melby (argued), Helena, for plaintiff.

John W. Northey (argued), Helena, for defendants.

MR. JUSTICE CASTLES delivered the Opinion of the Court.

This is an original proceeding brought by plaintiff Governor of Montana for declaratory relief pursuant to section 93-8901 et seq., R.C.M.1947, involving the constitutionality of several legislative enactments establishing and empowering defendant Legislative Finance Committee and its office of Legislative Fiscal Analyst. This cause is a companion case to No. 13069, *Board of Regents v. Judge*, 543 P.2d 1323, decided today.

Plaintiff (hereinafter called Governor) commenced this action October 29, 1975, with an application for leave to file a complaint stating that substantial questions of the constitutionality of these enactments existed and that the remedy available through trial in the district court was inadequate because the operation of these laws would impair and do irreparable harm to state government functions during the delay before final resolution of the matter by this Court. After an ex parte hearing on October 29, 1975, this Court granted the application and ordered that defendant (hereinafter called Finance Committee) answer the complaint, briefs be filed, and set the matter for an adversary hearing. Hearing was had.

Specifically this challenge involves three enactments of the Forty-fourth Legislature.

(1) Senate Bill No. 333, Chapter 448, Laws of Montana, 1975—The Legislative Finance Act- provides for the creation of the interim legislative finance committee whose membership is made up of four members of the senate finance committee, two members from the senate at large, four members of the house appropriation committee, and two members from the house at large. The act also creates the office of legislative fiscal analyst and specifies the duties of both the analyst and the committee.

(2) Senate Bill No. 401, Chapter 510, Laws of Montana, 1975, as set forth in the companion case, grants the legislative finance committee review and approval authority over budget amendments which are therein defined as expenditures by state agencies in excess of their appropriations.

(3) House Bill No. 1 (Special Session), Laws of Montana, 1975, specifically appropriates funds from sources other than the general fund which were not available for consideration by the legislature and modifies each of the appropriation bills of the Forty-fourth Legislature to insure that such funds are approved by the legislative finance committee in the form of a budget amendment before they are made available to the state agency for expenditure.

The Governor challenges the budget amendment authority in S.B. 401 and H.B. 1 (Special Session) of the Finance Committee by asserting in the alternative that either it is an unconstitutional delegation of legislative authority because it gives the Finance Committee authority to permit expenditures of money from the public treasury without an appropriation made by law, or an infringement on the doctrine of separation of powers because it allows the Finance Committee to exercise discretion exclusively reserved to the executive branch.

Additionally, the Governor argues if the Finance Committee is exercising administrative power, the legislature has conferred civil appointments upon members of the legislature who are ineligible for such appointment under Article V, Section 9, 1972 Montana Constitution. Section 7, S.B. 333 is void, argues the Governor, because it is an interference with the governor's constitutional duty to prepare and submit a budget to the legislature in Article VI, Section 9, 1972 Montana Constitution. The Governor also seeks to enjoin the Finance Committee from acting under the remainder of S.B. 333 to the extent duplication or interference with the Governor's constitutional budget duties result.

The following sections of S.B. 333 indicate a possible duplication of function or interference with the executive:

"Section 6. There is a new R.C.M. section numbered 43-1114 that reads as follows:

"43-1114. Legislative fiscal analyst's duties. The legislative fiscal analyst shall: (1) provide for fiscal analysis of state

government and accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including, but not limited to, *investigation and study of the possibilities of effecting economy and efficiency in state government;*

"(2) Estimate revenue from existing and proposed taxes;

"(3) Analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

"(4) *Make the reports and recommendations he deems desirable to the legislature* and make reports and recommendations as requested by the legislative finance committee and the legislature; and

"(5) Assist committees of the legislature, and individual legislators, in compiling and analyzing financial information.

"Section 7. There is a new R.C.M. section numbered 43-1115 that reads as follows:

"43-1115. Fiscal analysis information from state agencies. The legislative fiscal analyst has the authority to investigate and examine into the costs of state government activities and may examine the records, books, and files of any state agency, including confidential records of executive branch agencies. Every state agency shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law, and if requested, all underlying and supporting documentation. In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

"(1) by December 1, a copy of the documents which reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

"(2) by December 1, a preliminary budget which shall meet the statutory requirements for submission of the budget to the legislature; and

"(3) by December 15, all amendments to the preliminary budget." (Emphasis supplied.)

The Finance Committee's answer raises four defenses which are the subject of a motion to dismiss. *First*, that the complaint fails to state a claim upon which relief can be granted. *Second*, the Finance Committee asserts that this Court should not invoke its original jurisdiction under Rule 17, Montana Rules of Appellate Civil Procedure, because no emergency situation exists. *Third*, there are factual matters in dispute requiring an evidentiary hearing in district court. *Fourth*, defendant Finance Committee asserts that plaintiff Governor should be estopped from challenging the acts in question because he signed them and subsequently did not legally challenge them when he had an opportunity to do so.

On the merits of the Governor's challenge the Finance Committee states that the establishment of the interim committee was a valid exercise of legislative power and the members of the committee serve in their capacity as legislators, not civil officers. It argues the interim committee performs an incidental legislative function by altering expenditure limitations established by the legislature during its biennial sessions. The legislature in H.B. 1 (Special Session) established a contingency according to the Finance Committee, which becomes effective when the Finance Committee determines the contingency has been met. The Finance Committee argues such contingent appropriations approved by the legislative finance committee under S.B. 401 constitute a valid delegation of authority.

With regard to the Governor's challenge to the fiscal analysis powers in S.B. 333, these duties do not violate the separation of powers clause of Article III, Section 1, 1972 Montana Constitution, according to the Finance Committee. Specifically it argues Article VI, Section 9, 1972 Montana Constitution, confers a duty on the governor to submit *a budget* to the legislature, but this does not preclude the legislature from rejecting

all or part of that budget and substituting one of its own. The Finance Committee submits that the information obtained by the powers given in S.B. 333 is merely ancillary to the legislature's duty to make an independent and responsible decision concerning appropriations.

[1] Initially we consider the Finance Committee's motion to dismiss. The Governor opposes the motion on the basis that only legal issues are involved and during oral argument the Governor's counsel stated he was willing to concede any factual matters in question. We note at this point that because of the lack of facts presented, our opinion here is necessarily limited. The Governor maintains that each enactment is unconstitutional on its face. On the basis of the Governor's concession of factual issues and the fact that the answers required by this case will have such a significant impact on the operation of state government, (for example, this Court's decision in *Board of Regents v. Judge*, Cause No. 13069, 543 P.2d 1323, also decided today) we deem this Court's original jurisdiction proper under Rule 17, Montana Rules of Appellate Civil Procedure.

[2, 3] We also find that a declaratory judgment concerning the legislative acts in question provides a proper resolution of this controversy. *Board of Regents v. Judge*, supra. Finally, we think the doctrine of estoppel is inapplicable here in view of the Governor's duty to uphold the Montana Constitution. The Finance Committee's motion to dismiss is denied.

Moving to the merits of the controversy, we first consider the budget amendment authority given the Finance Committee under S.B. 401 and H.B. 1 (Special Session). Initially we find that the legislature in H.B. 1 (Special Session), Laws of Montana, 1975, did intend and did accomplish the appropriation of monies received from sources other than the general fund which were not available for consideration by the legislature. What remains is a categorization and constitutional evaluation of the function of that committee.

[4, 5] There can be no doubt that the legislature, sitting in session, could determine whether or not to release money already appropriated from a source other than the general fund and not available for consideration by an earlier session of that same legislature. Such a determination is an integral part of the final appropriation decision. The power to appropriate is a long established, well-recognized power of the legislature. *State ex rel. Haynes v. District Court*, 106 Mont. 470, 476, 78 P.2d 937 and cases cited therein. Further, these nongeneral fund monies are public operating funds of state government subject to the appropriation process. See companion opinion *Board of Regents v. Judge*, supra.

[6] Alternatively the legislature might, as it has often done in other areas, make a policy determination and delegate to an executive agency or officer the duty to later implement the legislature's policy determination.

The legislature has the power to establish interim committees to gather information upon which the legislature can evaluate past actions or use as a basis for future decisions. Article V, Section 10, 1972 Montana Constitution; *State ex rel. James v. Aronson*, 132 Mont. 120, 314 P.2d 849; Transcript of Proceedings, Montana Constitutional Convention, (1972), pp. 1950, 1951.

[7] But, the 1975 Montana Legislature in its enactment of S.B. 401 and H.B. 1 (Special session) empowering the Finance Committee to approve budget amendments delegated a power properly exercisable only by either the entire legislature or an executive officer or agency, to one of its interim committees. Such a hybrid delegation does not pass constitutional muster. The power in question here resides in either the entire legislative body while in session or, if properly delegated, in an executive agency. Clearly the action of the Finance Committee does not constitute the action of the entire legislature. Article V, Section 11, 1972 Montana Constitution. Just as clear is the fact that Article V, Section 9, 1972 Mon-

tana Constitution, would disqualify these legislators from membership on the Finance Committee if it were an executive agency. Therefore those sections of S.B. 401 and H.B. 1 (Special session) empowering the Finance Committee to approve budget amendments are declared invalid as unconstitutional delegations of legislative power.

[8] This determination that S.B. 401, Chapter 510, Laws of Montana, 1975, is unconstitutional necessarily denies the Finance Committee any power over those requests enumerated in section 1(3), H.B. 271, before us in the companion case *Board of Regents v. Judge*, supra. Since we have found the appropriation to have been made by the legislature, which both parties concede, the discretion regarding the disposition of these nongeneral fund unanticipated revenues resides within the executive branch.

Next we consider S.B. 333, which the Governor alleges to be an infringement on the executive branch and therefore violative of the separation of powers clause of Article III, Section 1, 1972 Montana Constitution.

This description from *State v. Johnson*, 75 Mont. 240, 249, 243 P. 1073, 1077, is the accepted discussion of separation of powers by this Court:

"In theory, this section [Section 1, Article IV, 1889 Montana Constitution almost identical to Section 1, Article III, 1972 Montana Constitution] * * * effects an absolute separation of the three departments of our government, 'but, while such is the theory of American constitutional government, it is no longer an accepted canon among political scientists; it has never been entirely true in practice.' 12 C.J. 803; Cooley on Constitutional Law, 44; Story on Constitution of the United States 525.

"* * *

"*That section 1, article 4, does not wholly prevent the exercise of functions of a nature belonging to one department by those administering the affairs of another is recognized in State ex rel. Hills v. Sullivan*, 137 P. 392, 48 Mont. 320, wherein Mr. Justice Sanner, speaking for this court, said: 'The separation of the government into three great departments does not mean that there shall be "no common link of connection, or dependence, the one upon the other in the slightest degree" (1 Story's Commentaries on the Constitution, § 525); it means that the powers properly belonging to one department shall not be exercised by either of the others. Constitution art. 4, § 1. There is no such thing as absolute independence.' *He then cites numerous instances of the exercise of powers by one department which, from their nature, would seem to belong to another, but which are incidents to the proper discharge of the powers vesting in the department exercising them, or are reposed in the particular department as a matter of convenience in governmental affairs.*" (Emphasis supplied.)

Mr. Justice Brandeis in *Myers v. United States*, 272 U.S. 52, 47 S.Ct. 21, 71 L.Ed. 160, 242 stated:

"The doctrine of the separation of powers was adopted by the convention of 1787 *not to promote efficiency but to preclude the exercise of arbitrary power*. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." (Emphasis supplied.)

We also take note of the language of Mr. Justice Holmes in *Springer v. Philippine Islands*, 277 U.S. 189, 209, 48 S.Ct. 480, 485, 72 L.Ed. 845, 852:

"The great ordinances of the Constitution do not establish and divide fields of black and white. *Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other.* * * *" (Emphasis supplied.)

To what extent then does S.B. 333 violate the separation of powers in view of the command of Article VI, Section 9, 1972 Montana Constitution, for the governor to "submit to

the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state." Again, our determination here is limited to a consideration of S.B. 333 on its face, due to the concession of factual issues by the Governor.

[9] Basic to the resolution of this issue is the fact that the budget in Montana is a *legislative* budget not an *executive* budget notwithstanding Article VI, Section 9. Article V and Article VIII, 1972 Montana Constitution, vest the power to approve appropriation bills and a budget in the legislative branch. Article V, Sections 1, 11; Article VIII, Sections 9, 12, 14, 1972 Montana Constitution. In other words the legislature has the power to adjust and finalize the budget. Given that power and responsibility the legislature through an interim committee may require such information from the other branches of government as is reasonably necessary to form a rational basis for its budget determinations.

[10] The Governor's assertion that Section 7 of S.B. 333 infringes on the executive branch because it requires a disclosure of information held by state agencies, including a copy of the preliminary budget, is of little substance. Indeed, should the executive branch withhold from the legislature or one of its interim committees any information reasonably necessary for budget decisions, it in fact would be interfering with the legislature to the extent of violating the separation of powers doctrine. Once prepared the preliminary budget is arguably a public document and should be available not only to the Finance Committee but to the general public as well under Article II, Section 9, 1972 Montana Constitution.

While an apparent duplication of effort in the preparation of two budgets and an apparent lack of cooperation may exist between the executive and the legislature in this matter, which results in a waste of taxpayers' money, these are insuf-

ficient grounds upon which to find a legislative enactment constitutionally invalid.

[11] The rule that the constitutionality of an act of the legislature must be presumed unless rebutted by proof beyond a reasonable doubt is well established in Montana. *State ex rel. Mills v. Dixon*, 66 Mont. 76, 84, 213 P. 227. This presumption has not been overcome here; and thus we hold as to S.B. 333, specifically as to Section 7, the legislature has acted properly.

This opinion, together with the opinion in the companion case No. 13069, shall constitute a declaratory judgment.

MR. CHIEF JUSTICE JAMES T. HARRISON, and MR. JUSTICES DALY, HASWELL and JOHN C. HARRISON concur.

APPENDIX 2

Lump Sum Funding – History and Background Information

1) Historical Implementation
2) Estimation of FTE to Determine, Distribute, & Spend the Lump Sum
3) Allocation Compared to Expenditure of Appropriations
4) Lump Sum Management and Accountability

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Legislative Fiscal Analyst
CLAYTON SCHENCK

September 13, 1999

To: Joint Subcommittee on Postsecondary Education Policy and Budget

From: Sandy Whitney, Senior Fiscal Analyst Sandy

Re: Lump Sum Funding – History and Background Information

The university system is currently in its third biennium of operation under a biennial "lump sum" funding policy wherein the legislature appropriates general fund, millage, and other funds to the Board of Regents for allocation by unit and program throughout the system. With the lump sum appropriation, the Board of Regents may transfer funds between programs, among units, or between fiscal years if the need arises. This appropriation procedure contrasts with the prior policy of annual appropriations specific to each program within each university unit. The purpose of this report is to: 1) review the historical implementation of lump sum funding; 2) briefly examine how the number of full time equivalent (FTE) students has been used to determine, allocate, and spend the lump sum appropriation; 3) compare allocation of the lump sum to the actual expenditure of the appropriation; and 4) review lump sum management and accountability issues.

Historical Implementation

The 1989 legislature passed House Bill 354, which mandated that a Postsecondary Education Study Committee (PESC) examine, among other things, the governance and funding of postsecondary education. In its "Summary of Recommendations" in October, 1990, the PESC recommended not only a permanent joint committee on postsecondary education, but that "a system-wide (lump sum) appropriation to the Board of Regents as an alternative to the unit/center-specific appropriation method" be implemented in the 1993 biennium budget. The committee also recommended that the Board of Regents allocate funds to each unit based on system-wide goals and priorities. The PESC recommended the policy because it felt the lump sum appropriation would: "1) encourage development of a system-wide perspective; 2) encourage adoption of system-wide needs and goals assessment; and 3) allow for greater management flexibility in times of tight resources."

The 1991 legislature implemented a joint study committee for the 1993 interim, but it did not implement lump sum funding as envisioned by the PESC. However, it did take a first step by adding language to House Bill 2 stating that:

> It is the intent of the legislature that the Board of Regents have additional appropriation flexibility to operate the vocational technical centers during the 1993 biennium. Therefore, the legislature has approved for each vocational technical center a single appropriation for its general operations. The appropriation for each postsecondary vocational technical center listed above is for the following programs: instruction, academic support, student services, institutional support, and operation and maintenance of plant...

The four-year units were not included in the language. However, the January, 1992, special session essentially approved a defacto lump sum appropriation by unit when it: 1) reduced general fund support for the six units by $1.4 million in fiscal 1992 and $7.5 million in fiscal 1993; and 2) gave the Board of Regents authority to allocate the reduction to each unit among programs.

The second step in lump sum funding was implemented by the 1993 legislature for the 1995 biennium when it added House Bill 2 language in the appropriation section for both the vocational technical centers and the six university units stating:

> It is the intent of the legislature that the Board of Regents have additional appropriation flexibility to operate the [vocational technical centers/six university units] during the 1995 biennium. Therefore, the legislature has approved for each [center/unit] a single appropriation for its general operations.

The legislature also allowed the Board of Regents to transfer up to 10 percent of each unit's appropriation between fiscal years. Thus, each campus received its own lump sum with limited ability to transfer between years.

The committee that succeeded the PESC, the Joint Committee on Postsecondary Education Policy and Budget (PEPB), recommended full lump sum funding to the 1995 legislature. It suggested that the legislature appropriate one sum for all educational units, including the community colleges, and one sum for the research and public service agencies.

Again the legislature did not enact the full recommendation. However, it did take a third step in implementing lump-sum funding by appropriating a lump sum for the 1997 biennium to the Board of Regents for the Office of the Commissioner of Higher Education (OCHE), except the community colleges, and all university system campuses. The lump sum appropriation allowed total flexibility in the management of OCHE programs and the university system campuses. This action was accompanied by consolidation of the system into two universities, each managing both four-year and two-year campuses. The 1997 and 1999 legislatures continued the lump sum appropriation for the 1999 and 2001 biennia. The current lump sum appropriation is approximately what was recommended by the PESC for the 1993 biennium.

Estimation of FTE to Determine, Distribute, and Spend the Lump Sum

The projected number of resident student FTE in the Montana University System (MUS) is one of the factors used to determine the level of the lump sum recommended by the executive and provided by the legislature. It is also a factor in OCHE's distribution of the lump sum to the individual units. Accurate enrollment projections are important because estimates that are too high result in budgets, appropriations, and operating plans that are larger than necessary, while estimates that are too low result in budget shortfalls.

Executive Budget and Legislative Appropriations – 2001 Biennium

The MUS estimated the number of FTE anticipated during the coming biennium and used the estimated increase over the prior year actual enrollment to determine the present law adjustment for enrollment changes in its budget request. The Office of Budget and Program Planning (OBPP) incorporated the MUS estimates in the Executive Budget for the 2001 biennium.

The legislature considered the present law adjustment and appropriated a lump sum for the 2001 biennium based on the MUS enrollment estimates proposed in the Executive Budget. This will provide the desired funding per FTE for the university system if estimates are accurate. In addition, the legislature added language to HB 2 that indicates legislative expectations for the 2001 biennium and the university system requirements if the projection differs from the actual enrollment. That language states:

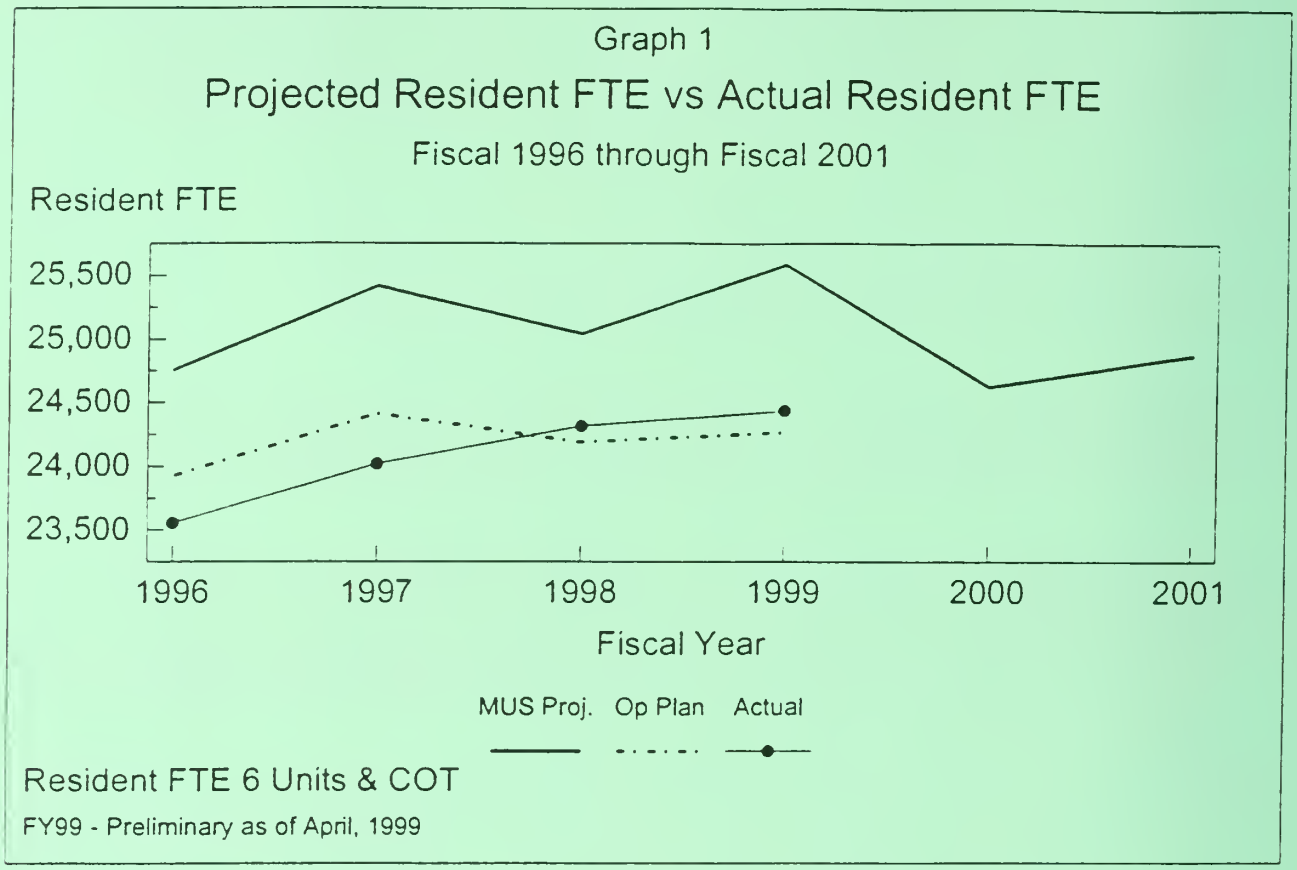
> The general fund and millage appropriation in item [OCHE – Appropriation Distribution Transfers] is calculated to fund education in the four-year units and the colleges of technology for an estimated 24,622 resident FTE students in fiscal year 2000 and 24,871 resident FTE students in fiscal year 2001. If actual resident student enrollment is greater than the estimated number for the biennium, the university system shall serve the additional students without a state general fund contribution. If actual resident student enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert $1,837 in general fund money to the state for each estimated FTE student who did not enroll.

This language penalizes the university system if its projections are not accurate. If the projections are too low, the system must serve the unanticipated students without additional state funding. If the projections are too high, the university system budget must be reduced by the amount of funding for each over-estimated student.

OCHE Allocation and Units' Operating Plans

The OCHE allocation of the lump sum to the units for the operating budgets is based on a formula cost of education per estimated resident FTE student at each unit, which includes adjustments for the cost of the various degrees and programs offered. In the 1997 and 1999

biennia, the number of FTE used to determine allocation to the units was lower than the original MUS projection, because, by the time the unit allocations were approved, it was clear that the projections were overly optimistic. The difference in the projections and the operating plan estimates compared to actual enrollments is illustrated in Graph 1.



The top line shows the MUS original projections for the 1997, 1999, and 2001 biennia that were included in the Executive Budget for presentation to the legislature. The legislature did not specifically fund the projected enrollment level for fiscal years 1996 through 1999, but it did fund the projected level in the 2001 biennium.

The MUS told the 1995 legislature that, when it allocated the funds, it would revert general fund to the state for each anticipated student who did not enroll during the 1997 biennium, based on the FTE estimates in the operating plan shown by the dashed line in the graph. Although the operating plan estimate was significantly lower than the original estimate, it was still too high in fiscal years 1996 and 1997. In those years the actual biennial enrollment was approximately 770 FTE fewer than estimated during allocation to the operating budgets, resulting in reduced expenditures and a general fund reversion from the lump sum of nearly $1.3 million.

The 1997 legislature appropriated less general and other state funding than requested in the Executive Budget. While the appropriation funded the number of legislatively estimated FTE, the legislature did not specify the number of resident student FTE that were to be served by the MUS or require reversions if actual enrollment was lower that that used for allocation to the operating budget. As the graph shows, the MUS operating plan estimate was slightly lower than

the actual enrollment in the 1999 biennium. If OCHE had allocated an the additional $1.0 million for all FTE estimated by the legislature, which it withheld from the lump sum for distance learning and faculty salaries (discussed below in the "Lump Sum Funding Management Flexibility" section of this report), the available funds would have accurately funded the actual enrollment.

Because the $1.0 million was not available to fund students in addition to those projected in the operating plan, the university system used $166,000 millage revenue not included in the original allocation to make partial adjustments in the units' budgets. Given that actual enrollment was higher than the operating plan and equal to the estimates provided to the legislature, there would have been no reversions, even if the legislature had specified the number of students funded.

As noted above, the legislature did fund the MUS projected resident enrollment for the 2001 biennium, and the system will be required to revert general fund if actual enrollment falls below that level. However, as shown in the graph, the MUS projected number of resident FTE is less than that projected for the prior two biennia and only slightly above the actual enrollment in fiscal 1999. Unless demographics change in the next two years, little or no reversion is anticipated.

Allocation Compared to Expenditure of Appropriations

The legislature appropriated lump sum funding for OCHE and the MUS beginning in fiscal 1996. This section of the report deals with how the system: 1) allocated the lump sum compared to the way the budget was calculated; and 2) expended allocated funds.

Allocation Compared to Appropriation

The appropriations for current operations during the 1997, 1999, and 2001 biennia were calculated by adjusting the base year actual expenditures for inflation, student enrollment increases, and other miscellaneous adjustments. The calculated amount was then appropriated by the legislature in a lump sum, which OCHE allocated to the units according to a cost of education per FTE allocation formula. The formula adjusts allocations depending on enrollment and the cost of the programs provided at the various units. Table 1 shows the lump sum allocation by unit for fiscal years 1998 and 1999.

Table 1

Expenditures Compared to Board of Regents Allocation

Fiscal Years 1998 and 1999

	FY 1998				FY 1999			
Units/COT	Lump Sum	Allocation	Expenditure	Exp. % Alloc.	Lump Sum	Allocation	Expenditure	Exp. % Alloc.
UM-Missoula*		$31,109,404	$31,447,074	101.1%		$32,320,813	$32,370,813	100.2%
MSU-Bozeman		36,047,784	35,983,375	99.8%		36,454,382	36,001,911	98.8%
UM-MT Tech		8,876,831	8,767,370	98.8%		8,626,971	8,576,971	99.4%
MSU-Billings		12,797,563	12,796,941	100.0%		13,294,416	13,663,468	102.8%
MSU-Northern		6,135,907	6,122,750	99.8%		6,069,709	5,988,386	98.7%
UM-Dillon		4,033,308	4,023,207	99.7%		4,094,724	4,253,956	103.9%
Subtotal		$99,000,797	$99,140,717	100.1%		$100,861,015	$100,855,505	100.0%
Great Falls COT		$2,337,417	$2,321,817	99.3%		$2,528,476	$2,508,399	99.2%
Helena COT		1,726,961	1,801,705	104.3%		1,753,585	1,778,585	101.4%
Subtotal		$4,064,378	$4,123,522	101.5%		$4,282,061	$4,286,984	100.1%
Unallocated**		$ 501,056						
Total Units & COT	$103,566,231	$103,566,231	$103,264,239	99.7%	$104,965,276	$105,143,076	$105,142,489	100.0%
Biennium***	$208,531,507	$208,709,307	$208,406,728	99.9%				

*FY 1998 expenditures at UM-Missoula include millage of $166,000 in addition to the allocated amount

**FY 1998 expenditures include expenditure of funds not allocated in the original operating plans

***The biennial allocation is greater than the legislative appropriation because units may carry unexpended funds from the first year forward to the second year

As the table shows, all units received an allocation based on estimated resident enrollment and the cost of programs offered. For example, the $4.9 million difference between the fiscal 1998 UM-Missoula allocation of $31.1 million and the MSU-Bozeman allocation of $36.0 million is the result of: 1) an estimated enrollment of 698 FTE more resident students at MSU-Bozeman than at UM-Missoula; and 2) programs offered at MSU-Bozeman that are generally more costly than those offered at UM-Missoula.

Expenditure of Allocated Funds

Table 1 shows that UM-Missoula, MSU-Billings, and the Helena College of Technology spent all the allocated state funds or more in fiscal 1998. UM-Missoula was able to spend more than originally allocated because an additional $166,000 of millage was transferred to that campus, along with a portion of the unallocated funds, primarily for additional students and distance learning. The Helena College of Technology also received a portion of the unallocated funds, primarily because enrollment was higher than anticipated. Funds transferred to all campuses that were not spent in fiscal 1998 were carried forward to the fiscal 1999 budget, as noted in the table.

Similar differences between allocation and expenditure can be seen in fiscal 1999. However, any unexpended funds at the end of the biennium are treated differently in the university system than in other agencies, as provided in 17-7-304, MCA. In the university system, unexpended state funds are transferred to a state special revenue account for deferred maintenance and equipment or fixed assets purchases. Other agencies may retain only 30 percent of the unexpended money and must revert the remainder to the funds from which the appropriation was made.

Lump Sum Management and Accountability

The Board of Regents is responsible for setting policy to manage the lump sum appropriation and all university funds, such as tuition and auxiliary funds. The use of the lump sum appropriation increases the management flexibility, for which the Regents agreed to be accountable to the legislature as discussed below.

Lump Sum Funding Management Flexibility

The lump sum appropriation gives the university system the flexibility to use funds to accomplish the Regents' policy and management priorities. For example, using the lump sum funding flexibility, the OCHE withheld $1.0 million from the 1999 biennial lump sum and allocated those funds outside the funding formula, as shown in the fiscal 1998 allocation column of Table 1. Of that amount, $400,000 was used for a distributive learning initiative to develop electronically delivered courses. Because of lump sum funding, the Commissioner was able to retain funds for this program, even though the legislature did not approve the specific request for that purpose.

The remaining $600,000 in the 1999 biennium lump sum withholding was distributed to the six smaller campuses of the MUS to help them meet their plans and obligations under their collaborative agreements with faculty. The latter distribution was a policy decision to help pay for negotiated faculty salary increases (exceeding state-funded salary increases) for which tuition was insufficient, primarily because enrollment projections were not being met. This distribution was possible because of the management flexibility inherent in lump sum funding.

In other examples of management flexibility, the system has used the lump sum to: 1) transfer $200,000 unused student aid funds from the OCHE to units operating budgets in fiscal 1997; 2) transfer all unused funds forward to the second year of the biennium, as it did in the 1999 biennium; and 3) propose a transfer of Montana Tuition Assistance Program (MTAP) funds from the lump sum to students attending tribal colleges in fiscal 2000.

Both system reorganization and lump sum funding facilitate the view of the MUS as one system, rather than competing programs or local units. This global view lends itself to budget action affecting the system as a whole and OCHE allocations to reflect Regents' priorities. Lump sum funding allows expression of legislative priorities that may differ from those of the Regents. However, the legislature cannot assume that its priorities are followed unless it restricts state funding for a particular purpose, either within or outside of the lump sum.

For example, if the legislature had restricted recent appropriations specifically to OCHE programs or university system campuses, as it did until the early 1990's, none of the above transfers would have been possible. The Regents would have been unable to use state funds designated by the legislature for one unit to pay higher faculty salaries at another unit. If student assistance funds had been designated for students attending the university system units, those funds could not be transferred to units operating budgets or to students attending universities outside the Montana University System. However, please note that the legislative priorities

extend only to the use of state funds. According to the Constitution, the Board of Regents, rather than the legislature, controls university funds such as tuition.

Lump Sum Accountability

The MUS told the legislature it would be accountable for certain specific actions in exchange for lump sum funding, and that these actions would be pursued during the 1997 and subsequent biennia. The MUS position was that lump sum funding would allow management flexibility that could result in more efficient operation at all the campuses, with the result that quality could be maintained while still keeping student costs from rising more rapidly than projected. The university system met agreed upon expectations when, during the 1997 biennium, it:

1) increased tuition to increase faculty salaries and did not increase tuition beyond what it said it would;
2) allocated funds based on a cost of education formula;
3) moved funds among campuses and agencies to compensate for shortfalls in funding faculty salaries;
4) reverted general fund for estimated students who did not enroll;
5) managed its budget so that no supplemental appropriations were required;
6) enacted a policy capping the number of state-supported credits that a student may earn and reduced the required number of credits to obtain a degree; and
7) enacted a policy stating that if a student completes any accredited campus's core curriculum, it is entirely transferable among campuses.

Performance measures for management and reporting purposes, such as numbers of classes taught, hours of student advising, or increased quality of libraries, have not yet been developed. These measures will provide some of the information needed by the subcommittee to evaluate the effectiveness of lump sum funding. The system has tentatively agreed to provide an update at the PEPB meeting in November, 1999, and comparisons with other states may also yield quantitative comparable information to aid in the evaluation of lump sum funding. Information from other states will be provided to the subcommittee later in the interim.

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APPENDIX 3

Montana University System Student FTE and Funding
Fiscal Years 1992 through 2000

MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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Legislative Fiscal Analyst
CLAYTON SCHENCK

March 14, 2000

To: Joint Subcommittee on Postsecondary Education Policy and Budget

From: Sandy Whitney, Senior Fiscal Analyst

Re: Montana University System Student FTE and Funding, Fiscal Years 1992-2000

The purpose of this memo is to provide historical student and funding data for the Montana University System (MUS). The data in the upper portion of Table 1 include resident and nonresident enrollment at the units and colleges of technology and total enrollment comparisons for fiscal years 1992 through 2000. The lower portion of the table shows historical: 1) state and total funding along with the per-FTE funding; and 2) resident and nonresident tuition.

Table 1
Resident & Non-Resident Students**
Fiscal Years 1992 through 2000

Unit	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	Op Plan FY 2000	Change FY92-00*	%Change FY92-00*
6 Units - Resident FTE	21,878	21,564	21,580	21,121	21,063	21,289	21,439	21,526	21,605	(273)	1.25%
6 Units - Nonresident FTE	4,648	5,523	5,803	6,252	6,663	6,800	6,798	6,836	7,264	2,616	56.28%
Total Units	26,526	27,087	27,383	27,373	27,726	28,089	28,237	28,362	28,869	2,343	8.83%
5 COT - Resident FTE	2,331	2,314	2,384	2,452	2,494	2,731	2,885	2,910	3,018	687	29.47%
5 COT - Nonresident FTE	0	0	0	51	95	99	105	111	141	90	176.47%
Total COT	2,331	2,314	2,384	2,503	2,589	2,830	2,990	3,021	3,159	777	33.33%
Total Resident FTE	24,209	23,878	23,964	23,573	23,557	24,020	24,324	24,436	24,623	414	1.71%
Total Nonresident FTE	4,648	5,523	5,803	6,303	6,758	6,899	6,903	6,947	7,405	2,757	59.32%
Total Enrollment	28,857	29,401	29,767	29,876	30,315	30,919	31,227	31,383	32,028	3,171	10.99%
State Funding	$ 114,221,099	$ 110,111,417	$ 104,232,713	$ 99,127,589	$ 98,551,385	$ 100,917,613	$ 103,231,940	$ 105,226,255	$110,019,925	$ (4,201,174)	-3.68%
State Funding Resident FTE	4,718	4,611	4,350	4,205	4,184	4,201	4,244	4,306	4,468	(250)	-5.30%
Total Funding	$ 156,289,916	$ 165,532,417	$ 165,107,555	$ 169,235,594	$ 180,522,662	$ 190,623,241	$ 200,301,157	$ 208,731,936	$210,008,032	$ 53,718,116	34.37%
Total Funding Total FTE	5,416	5,630	5,547	5,665	5,955	6,165	6,414	6,651	6,557	1,141	21.07%
Resident Tuition*	$ 1,077	$ 1,348	$ 1,418	$ 1,631	$ 1,777	$ 1,861	$ 1,982	$2,110	$ 2,178	$ 1,101	102.23%
Nonresident Tuition*	3,249	4,778	5,142	5,440	5,839	6,151	6,593	7,069	7,359	4,110	126.50%

* At UM four-year campuses. FY 96 and later years are average of lower & upper division tuition
** Nonresident COT FTE in resident data before FY95

The fiscal 2000 data are from the MUS operating plans. Preliminary data indicate that the actual resident enrollment will approximate the operating plan estimate, but the actual nonresident FTE student count may be approximately 530 fewer than estimated. As a result, the actual nonresident and total funding percentage increases from fiscal 1992 will clearly differ from those shown in the table. However, the final actual total funds per student will likely approximate those shown.

ENROLLMENT

As the Table shows, resident enrollment at the units declined by 1.2 percent from fiscal 1992 to fiscal 2000, while resident enrollment at the colleges of technology (COT) increased by 29.5 percent in the same period. A number of factors, including economic and financial factors, may be influencing the shift in growth rates from the units to the COTs. However, a major portion of the shift coincides with the implementation of the Board of Regents' policy that encourages higher student enrollment at the COTs through expanded core curriculum course offerings and relatively modest tuition increases.

The estimated nonresident enrollment at the units increased by 56.3 percent from fiscal 1992 to fiscal 2000. Since data on nonresident enrollment at the COTs is available only from fiscal 1995 forward, the estimated nonresident enrollment gain figured from that date is 176.5 percent.

The total resident enrollment increase in the MUS was 1.7 percent from fiscal 1992 to fiscal 2000, while the nonresident enrollment was expected to increase by 59.3 percent in the period. Given preliminary data for fiscal 2000, it appears that nonresident enrollment will actually decrease in the current year after minimal growth in fiscal years 1998 and 1999. If preliminary estimates are accurate, the total nonresident enrollment increase from fiscal 1992 to fiscal 2000 would be approximately 48.0 percent rather than the 59.3 percent shown. This reduction from expectations coincides with large nonresident tuition increases beginning in fiscal 1998, as shown in the last line of the table. (For additional information concerning nonresident tuition and enrollment, see the LFD report, "Montana University Units Compared to Peers in Selected States," January 28, 2000).

FUNDING

As noted above, the lower portion of the table shows the system funding, funds per FTE student, and the tuition rates each year from fiscal 1992 through the fiscal 2000-operating plan. In that period, the total state funding for the MUS current operating fund, including general fund, millage, and interest, decreased by $4.2 million or 3.7 percent. The state funds per resident student decreased by $250, resulting in an enrollment adjusted funding decrease of 5.3 percent during that time.

In contrast, the total funding, which includes all state funds and tuition, increased by 34.4 percent, and the total funds per total FTE increased by 21 percent. These data show that the entire increase in funding per student, including inflationary increases and net state funding decreases, was provided through tuition increases for both residents and nonresidents. For comparison purposes, the tuition data provided at the bottom of the table show that: 1) resident tuition more than doubled from fiscal 1992 to fiscal 2000; and 2) nonresident tuition increased by 126.5 percent in that period.

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APPENDIX 4

Models of State/University System Management

1) Purpose
2) State/Higher Education Management & Funding Relationships
3) Objectives of Higher Education Financing
4) Budget Methods and Objectives
5) Subcommittee Options

MODELS OF STATE/UNIVERSITY SYSTEM MANAGEMENT

A Report Prepared for the

Postsecondary Education Policy and Budget Subcommittee

by

Sandy Whitney, Senior Fiscal Analyst

October 20, 1999

Legislative Fiscal Division

PURPOSE

The purpose of this report is to help the subcommittee form a basis to evaluate the effectiveness of lump sum funding, which is one of the goals of SJR 16. The report discusses: 1) state/university models of management and funding relationships; 2) objectives of higher education financing; 3) budget methods and objectives; and 4) subcommittee options.

The narrative details the state/higher education management and funding relationships in 1989 and shows how those relationships changed during the last ten years as a result of the: 1) 1975 Supreme Court decisions on university system autonomy ("The Structure of Higher Education in Montana", September, 1999), which were gradually implemented through the 1980's; and 2) the increasingly less restrictive lump sum funding implemented by the legislature beginning in the 1993 biennium ("Lump Sum Funding – History and Background Information", September, 1999). Secondly, the report defines nine probable objectives of higher education financing and summarizes the requirements for accomplishing each. Third, it discusses possible higher education budgeting methods and details the defined objectives most likely to be addressed through each method. Finally, it provides some options for additional discussion or study.

Significant portions of this narrative, identified by indentation and bold type, have been reprinted from the University Funding Study Committee's Report to the Fifty-first Legislature in January 1989.

STATE/HIGHER EDUCATION MANAGEMENT AND FUNDING RELATIONSHIPS

Nationally the literature indicates that tension exists between public higher education and the state... In Montana, this tension is largely the result of the varying responsibilities ... **allocated in Montana's Constitution for the Board of Regents, the Executive Branch, and the Legislative Branch. Denis Curry and Norman Fischer, higher education researchers for the state of Washington, analyzed financial relationships between states and higher education institutions and developed a continuum of the characteristics of those relationships. The continuum ranges from a high degree of state control to a high degree of institutional flexibility. Four "models" of higher education financing emerged:**

A. the "State Agency" model, which involves the highest degree of state involvement in all aspects of institutional operations;
B. the "State-Controlled" model, which allows more flexibility in the areas of staffing and programs, but maintains the involvement of the executive and legislative branches in some of the operations, such as the distribution of funds among programs;
C. the "State-Aided" model, which is publicly controlled, but the state appropriations and allotment is limited to the state general fund; and
D. the "Corporate" model, which grants independent non-profit status to the institutions. Services are specified through contract agreements for specific activities and student "spaces", and represent the highest degree of institutional flexibility.

Montana's State/Higher Education Relationships on the 1980's

To understand Montana's state-higher education relationship in reference to this continuum, a checklist (Appendix A) of characteristics was used to develop Montana's profile. Table 1 shows Curry and Fischer's four "models" along the continuum and the characteristics which profile the state-higher education relationships. Those characteristics that applied to Montana in 1988 are indicated with an asterisk and are shown in bold, outlined type. In all instances for Montana, the questions on the checklist were best answered with a "yes" response in the state-controlled category in 1988.

Table 1
State/Higher Education Relationships in 1988*

	High State Control<--			>Institution Flexibility
Characteristics	State Agency	State-Controlled	State-Aided	Corporate
Budgeting	Specific workload factors basis for level of request	***Variety of formula & incremental bases employed**	State support based on general allocation formula e g $/FTE	Requests based on services to be provided
Expenditure Oversight	All funds deposited in general fund	***Restricted funds exempt from detailed control**	All funds raised by institutions are retained locally	Free to spend state funds in agreement with terms of contract
Accountability Expectations	Focuses on process consideration, spending plans, personnel policies	***Primarily post-audit basis; some flexibility in staffing patterns**	Strictly post-audit basis, focus on program effectiveness	"Satisfactory Performance" specified in contract for services
Tuition, Fees & Pricing Policy	Fees prescribed by the legislature	***Total tuition levels prescribed by legislature**	Fees and charges established by institutional board	Total control of all funds, including fees
Financing Options	Financial responsibility for higher education vested solely in state	***State primarily responsible for financing higher education**	Financial responsibility shared by state and the institution	Ultimate financial responsibility vested in the institution
Salary Administration	All personnel on state personnel system	***Some degree of flexibility in salary increases to faculty and staff**	Complete flexibility in setting salary levels	Salaries strictly an institutional decision
Enrollment Policy	Legislature determines limits on enrollment & admission standards	***Legislature sets enrollment assumptions by institution**	Enrollment policy related to aggregate service level rather than institution	Predetermined number based on contracted spaces
Program Review	A non-higher ed state control agency can approve or eliminate programs	***State higher education agency can approve or eliminate programs**	Institutional self-study with state oversight	Strictly institutional concern

* Montana relationships in 1988 - published in the Report to the Fifty-First Legislature by the University Funding Study Committee in January 1989

According to the Report to the Fifty-First Legislature, the Montana state/higher education relationship in 1988 was congruent with that of a state-controlled model. Montana higher education institutions were not

budgeted in the same manner as the state agency model, nor did they have the flexibility available to state-aided institutions or the contractual relationship of the corporate model.

> **The approaches to funding vary greatly in the autonomy given to higher education. Curry and Fischer assert that "By the 1980's, few [institutions] would lay claim to untrammeled autonomy. As Boyer (1981) put it, "we can no longer talk about autonomy; none of us is autonomous; but we can talk about integrity - the development of a climate that would allow our institutions to keep the freedom they need to manage their own affairs, while proving to the public that they are serving consumers in an adequate and effective way."**

Montana's State/Higher Education Relationships in the 1990's

Supreme Court decisions in 1975, Judge v Legislative Finance Committee and Board of Regents v Judge, held that the Board of Regents is solely responsible for management of the Montana University System (MUS), and that the legislature cannot do indirectly what it cannot do directly. As a result, from 1975 through the 1980's, the state/higher education relationships changed from the state agency model to a

Table 2
State/Higher Education Relationships in 1999*

	High State Control<--------			->Institution Flexibility
Characteristics	State Agency	State-Controlled	State-Aided	Corporate
Budgeting	Specific workload factors basis for level of request	Variety of formula & incremental bases employed	***State support based on general allocation formula e.g. $/FTE**	Requests based on services to be provided
Expenditure Oversight	All funds deposited in general fund	Restricted funds exempt from detailed control	All funds raised by institutions are retained locally	****Free to spend state funds in agreement with terms of contract**
Accountability Expectations	Focuses on process consideration, spending plans, personnel policies	Primarily post-audit basis, some flexibility in staffing patterns	***Strictly post-audit basis; focus on program effectiveness**	*Satisfactory Performance* specified in contract for services
Tuition, Fees & Pricing Policy	Fees prescribed by the legislature	Total tuition levels prescribed by legislature	Fees and charges established by institutional board	***Total control of all funds, including fees**
Financing Options	Financial responsibility for higher education vested solely in state	State primarily re-sponsible for financing higher education	***Financial responsibility shared by state and the institution**	Ultimate financial responsibility vested in the institution
Salary Administration	All personnel on state personnel system	Some degree of flexibility in salary increases to faculty and staff	***Complete flexibility in setting salary levels**	Salaries strictly an institutional decision
Enrollment Policy	Legislature determines limits on enrollment & admission standards	Legislature sets enrollment assumptions by institution	***Enrollment policy related to aggregate service level rather than institution**	Predetermined number based on contracted spaces
Program Review	A non-higher ed state control agency can approve or eliminate programs	State higher education agency can approve or eliminate programs	Institutional self-study with state oversight	***Strictly institutional concern**

* Montana relationships in 1999 following interpretations of the 1972 Montana Constitution and provision of lump sum funding from state funds
**Montana relationship - MUS generally free to spend funds as it likes, but no written contract beyond the statement in HB 2 that the MUS is to have lump sum funding

state-controlled model, as found by the University Funding Study Committee in its 1989 report.

As indicated in the "Lump Sum Funding" report to the PEPB, dated September 13, 1999, the legislature moved toward even less state control and more university system management flexibility during the 1990's as it approved ever-higher levels of lump sum funding. The extent of that movement is documented in Table 2, which shows that the MUS no longer operates as a state-controlled system. Most of the system characteristics relative to budgeting, accountability, financing, salary administration, and enrollment policy are consistent with those of a state-aided system, which gives more institutional flexibility than a state-controlled system. The one area where elements of the state-controlled model still exist is in budgeting, where a combination of bases, increments, and FTE formula amounts are used to establish the final appropriation level. However, because the state relies on an FTE formula for all projected increases in enrollment, the relationship was shown as state-aided in Table 2.

The MUS now has some characteristics of a corporate model as well. The Board of Regents has total flexibility under lump sum funding to move state funds in the lump sum appropriation between programs, among units, and between fiscal years, even though there is no contract between the system and the state beyond language in HB 2. It has total control over all tuition and fees, and programs are strictly a concern of the Board of Regents. Even salary administration, shown in the table as being more characteristic of a state-aided model in Montana, would fall into the corporate model if Montana did not specifically and separately budget a certain amount of state funds for staff salary increases in the pay plan bill.

Alternative Relationships

Given the requirements of the Montana Constitution and the findings of the Supreme Court, as discussed by Eddye McClure in "The Structure of Higher Education in Montana" in September 1999, the MUS management and financing could not be returned to the state-controlled model of the 1980's or the state agency model. *Under the Constitution, as interpreted by the Supreme Court, the legislature cannot re-assume control of restricted funds, tuition and fees, staffing patterns and staff salaries, or university academic programs.* Those functions are within the purview of the Board of Regents under the Constitution. Constitutional amendments would be required to reassert state control of the university system. To make the MUS a state agency like all other agencies would require elimination of the current special constitutional provisions for the university system.

However, the legislature has more flexibility within the state-aided and corporate models of financing. For example, the legislature is not required to provide lump sum funding for the system. Within the state-aided model it may restrict the use of state funds for desired purposes. *If the university system accepts the funds, it must accept the attached restrictions.* Conversely, the legislature could make statutory changes that would move management more toward the corporate model of financing. This could take the form of a contract with the Board of Regents to manage state facilities and provide services to a specified number of state students at a specified price, based on a defined satisfactory performance. This would leave the ultimate financial responsibility vested in the Board of Regents. The university system would then be essentially a private contractor providing services to state students.

When the PEPB has completed its evaluation of the effectiveness of lump sum funding, which provides more university system flexibility and less state control than restricted funding, it may wish to consider management and funding options that could include:

A. maintaining the management and funding in the combined state-aided/corporate models as they currently exist;

B. proposing constitutional amendments designed to make the university system a state agency;
C. proposing constitutional amendments designed to provide more state control over university system management and funding, possibly including salaries and tuition;
D. recommending elimination of lump sum funding and more restrictions on use of the state funds, in conformity with the state-aided model of management and funding; or
E. signing a contract with the Board of Regents to manage facilities and provide services for a specified number of state students, in conformity with the corporate model of management.

OBJECTIVES OF HIGHER EDUCATION FINANCING

As indicated in the Report to the Fifty-First Legislature in 1988, general objectives for higher education financing were compiled from state studies of higher education financing, primarily from Minnesota, Washington, Texas, and New Hampshire. State selected objectives for higher education financing should guide the choice of a funding method; the funding method should not determine the objectives. Although other states can provide objectives and funding patterns, the funding method that is chosen must be tailored to fit Montana's unique needs and values.

A. Equity - Provide for equity and equality of opportunity to students from campus to campus. The funding of programs should not be dependent on the political power of an institution. Similar programs on different campuses should be receiving similar financing for those programs. This requires a method that provides funding on a system-wide basis, and not institution by institution.

B. Innovative Management - Provide incentives for flexible and innovative resource management to support cost-effective procedures and the adaptation of program for changing educational needs. Efforts to reduce costs or revise programs should not result in the disincentive of revenue loss to the institution. This would require a method that allows an institution the flexibility to transfer funds and to reinvest cost savings to meet other institutional needs, rather than the loss of the funding from the base.

C. Quality - Encourage quality with explicit incentives for providing high quality services as demonstrated by clearly identifiable measures of performance. This requires the establishment of procedures to evaluate quality, a task that can be very difficult.

D. Cost Differences - Recognize differing cost patterns based on factors such as size, mission, and program mix. This adds complexity to the funding method by requiring data to support all those factors.

E. Access - Enhance access to higher education for those residents who have the desire and the capability to benefit from higher education. This may include open admission standards as some institutions, or support for off-campus coursework and for technological delivery of courses. It also requires support for programs that will provide financial support, whether scholarships, work study, or loans, for those students who cannot afford the costs of higher education.

F. Ongoing Assessment - Provide incentives for ongoing assessment and evaluation of the institution's strengths and weaknesses through efforts that involve faculty as well as administrators and state decision-makers. This information forms a basis for

assessing the need to improve or change current activities and may be used by the institution and communicated to the public.

G. Planning - Allow for Long-Range Planning by recognizing the academic commitments to students in four-year programs and to contract personnel. Enrollment declines require program phase-out time. program changes take time to implement, and tenure and negotiated agreements do not allow immediate flexibility to reduce programs and personnel. This requires spreading enrollment and program related funding changes over a period of time.

H. Productivity - Provide for increased productivity to meet the costs of increased enrollment or services. This requires a mechanism that takes into account workload factors such as student faculty ratios, size of physical plant, and enrollment.

I. Data - Utilize accurate and comparable data that will provide a common basis for decisions, an accurate picture of costs, and a comparable base for budgeting. This would require data that is organized according to higher education program classification standards and is verifiable for accuracy.

BUDGET MEHTODS AND OBJECTIVES

There are three basic budget methods - incremental, formula, and performance. Incremental budgeting focuses upon the "base" year budget with emphasis on increases from the "base" year. It generally focuses on the expenditure level and has little or no reference to analysis of services produced or resources needed to produce the services. Formula funding relates units of service to resources needed. Performance funding attempts to use performance units and detail so that economy and efficiency can be ascertained easily, which in theory links accomplishments to resources.

No single approach to funding serves all states or all institutions equally well. The three general approaches often co-exist or are blended in actual practice as states and institutions attempt to find a combination most suitable for their environment. Montana uses an incremental approach for most state budgets. In the late 1970's Montana tried to use performance based-budgeting but found that it was too time consuming and difficult to adequately measure the achievement of goals for most programs. A formula began developing for the Instruction Program of the university system in the 1975 session.

The 1989 Montana system for funding higher education blended two approaches--incremental funding for the plant, research, and public service programs which are non-enrollment related, and formula funding for the enrollment related programs of instruction, support, and scholarships and fellowships (but it did not add performance funding). In addition, incentive funds for targeted state or institutional goals have been appropriated to the six units independent of the higher education appropriation method. In the 1987 session additional funds were appropriated for a tourism research center, research at the University of Montana's Yellow Bay Biological Station, and telecommunication equipment for intercampus delivery of coursework.

The construction of the budgets for the Montana system in recent biennia, including the 2001 biennium, still blends incremental funding for non-enrollment related programs and formula funding for those

programs related to enrollment. The difference is that the legislature appropriated funds, including tuition, by program by unit in 1989, and the universities spent those funds as directed, subject to limited transfer authority provided in statute to all state agencies. For the 1997 through 2001 biennia, the budget level was constructed as before, but the legislature appropriated the total amount of funds in a lump sum without restricting its use. This provided the university system the flexibility to use those funds as needed throughout the biennium. The result was the shift from the state-controlled model to the corporate model of expenditure oversight.

As noted in the Report to the Fifty-First Legislature, Table 3 lists the objectives of higher education and financing approaches. The three major higher education financing approaches, which are the same in 1999 as they were in 1988, are scored against the higher education financing objectives. The degree to which the funding approach satisfies the objective is categorized from one to three. Category 1 indicates that the objective is not satisfied or is very difficult to meet using the funding approach. Category 2 indicates that the approach partially meets the objective. Category 3 indicates that the approach meets the objective. The category assignments were based on the advantages and disadvantages of the different approaches, studies, and research on higher education financing, and the assessment of higher education objectives done in Minnesota and New Hampshire in 1988.

Incremental - The incremental funding approach most strongly meets objectives G. (Planning Capacity) and I. (Accurate Data), by predictably recognizing and increasing the budget base, and by using actual expenditure data that is verifiable. Objective D. (Cost Differences) is partially met because historic costs differences are perpetuated and built into the base. The rest of the objectives (A, B, C, E, F, and H) are very difficult to meet using incremental funding.

Formula - The formula funding approach strongly meets objectives A. (Equity), D. (Cost Differences), E. (Access), and H. (Increased Productivity) by supporting a form of equitable funding from campus to campus with a system-wide approach, using program cost factors in the formula, and providing funding based on enrollment data. Formula funding partially satisfies objectives B. (Innovative Management), F. (Ongoing Assessment), G. (Long-Range Planning), and I. (Accurate Data). The formula approach allows flexibility in expenditure categories, but does not provide financial support for program development or change. The use of enrollment and program data to determine funding provides a minimal basis for ongoing assessment but does not require it. Long-Range Planning is hampered by the erratic increases and decreases that may occur for funding based on enrollment changes. Data for formula funding involves workload measures and peer comparisons that are less easy to measure and to verify than actual expenditure data. The objective that is the least met is objective C. (Quality), which is not addressed by the use of the formula funding approach.

Performance - The performance funding approach most strongly meets objectives B. (Innovative Management), C. (Quality), and H. (Increased Productivity), by providing funds specifically for those purposes and requiring evidence of attainment of performance. Objectives F. (Ongoing Assessment), A. (Equity), and E. (Access) are partially met through the requirement for assessment to meet performance requirements, but that assessment may not be used on an ongoing basis. If equity and access issues are not specifically targeted for the use of performance funding, the objectives will not be met. Performance funding does not meet objectives D. (Cost Differences), G. (Long-Range Planning), or I. (Accurate Data). Cost differences are not recognized, funding may be short-term or easily eliminated, and valid performance data is extremely difficult to gather.

Table 3
Summary of Higher Ed. Budgeting Methods by Objectives

Higher Education Financing Objectives	Budgeting Approach: Incre-mental	For-mula	Perfor-mance	MT 1988	MT 1999
A. Provide for Equity	1	3	2	3	3
B. Provide Incentives for Innovative Management	1	2	3	1	2
C. Encourage Quality	1	1	3	1	1
D. Recognize Cost Differences	2	3	1	2	3
E. Enhance Access	1	3	2	3	3
F. Provide Incentives for Ongoing Assessment	1	2	2	2	2
G. Provide for Long-Range Planning	3	2	1	2	3
H. Provide for Increased Productivity	1	3	3	3	3
I. Rely on Accurate Data	3	2	1	2	2
TOTALS	14	21	18	19	22
AVERAGES	1.56	2.33	2.00	2.11	2.44

1 Does not meet the objective
2 Partially meets the objective
3 Meets the objective

Montana's Current Budgeting Method - Montana's current approach to financing higher education, which blends incremental and formula approaches, has changed little since the Report to the Fifty-First Legislature. As was true in 1988, this blend strongly encourages objective E. Access by tying a portion of funding to enrollment projections. The institutions are encouraged to recruit and retain students to maintain and increase funding. Objectives A. (Equity), D. (Cost Differences), and H. (Increased Productivity) are reasonably well met through use of a system-wide approach that: 1) recognizes cost differences between programs and campuses; and 2) provides funding for increased enrollment, which for the last few biennia has been based on projected enrollment rather than prior year averages. Therefore, these three objectives appear to be well satisfied with this funding approach.

Please note that, for the 1997-2001 biennia, lump sum funding has allowed the system to transfer funds to other campuses. This flexibility adds to the recognition of cost differences, as shown in the table, because the transfers are included in the base budget for succeeding biennia.

Objective B. (Innovative Management), F. (Ongoing Assessment), G. (Long-Range Planning), and I. (Accurate Data) are partially satisfied with the current Montana method. The general formula funding approach [only] **partially meets these objectives for the same reasons that exist for the Montana approach: 1) it does not provide financial**

support for program development or change; 2) it uses enrollment and program data to determine funding, but does not require the data to be used for program assessment; 3) erratic increases and decreases may occur in funding which relies on enrollment factors; and 4) the data is less easy to measure and to verify than actual expenditure data.

With the advent of lump sum funding, the deficiencies in these factors are partially mitigated because the university system has the flexibility to transfer funds to or from units or programs that may have erratic increases/decreases in enrollment. In addition, lump sum funding allows the university system to use some funds for innovation, assessment, or long range planning deemed necessary by the system. The disadvantage from a state point of view is that the university priorities may not necessarily be the state priorities. If the legislature wishes to impose other priorities, it must restrict state funding for those purposes and establish a way to evaluate if the state priorities are being implemented.

Objective C. (Quality), is not met using Montana's approach. The only funding approach that appears to be able to meet this objective is performance funding.

<u>Average Score</u> - **The average scores for each funding approach (using the scoring method in Table 3) indicate that a total incremental approach average score is 1.56 or in the range of minimal meeting of the general objectives of higher education. The total formula approach averages 2.33 or close to reasonably meeting the objectives. Both the performance and the** [1988] **Montana methods average 2.00 and 2.11 respectively, but the scores by objective are very different.** Montana's 1999 score of 2.44 is an increase over the level a decade earlier, primarily because of the implementation of lump sum funding. Providing flexibility in system management allows more emphasis on innovative management, recognition of cost differences, and long-range planning. However, **no single approach satisfies all the objectives of higher education, and none of the approaches satisfy the objectives to the same degree.**

<u>Budget Method Supplements</u> - **Actions taken outside the funding approach may compensate for weaknesses in meeting the objectives. Quality may be encouraged using approaches like...** the evaluation of all units undertaken by South Carolina in its performance based budgeting plan (report to the PEPB on "Postsecondary Education Performance Measures in South Carolina, November 7, 1997). **The decision by the 1987 Montana Legislature to allow MSU to retain energy cost savings in the base provided an incentive for innovative management.** Approval of lump sum funding by the 1995 and subsequent legislatures also provides incentive for efficient and innovative management because the university system may transfer surplus funds to areas of innovation.

SUBCOMMITTEE OPTIONS

The PEPB subcommittee may wish to review the higher education financing objectives in Table 3 to determine if any should receive more or less emphasis by the state. For example, the area where the current funding method is least likely to emphasize state priorities is the encouragement of quality. At this time, quality is left entirely to the Board of Regents. The state may know intuitively that Montana has a quality system of higher education, but there are no objective measures for verifying that. Should the PEPB wish to emphasize quality, it might wish to define certain measures and use performance-based budgeting for a portion of the budget to assure that identified qualities are present (see the attached report to the PEPB on "Goals and Accountability Measures Discussion Points, September 30, 1994).

Committee options for action and additional study, which are not necessarily mutually exclusive, include:

1) prioritizing the higher education financing objectives shown in Table 3;
2) adopting the most important priorities as subjects for additional research;
3) defining what measures would allow legislative evaluation of the university system operation in the areas of highest state priority; and
4) defining ways the state could aid in accomplishment of the highest priorities.

APPENDIX A

State - Higher Education Financial Relationships

Checklist of Characteristics

Denis J. Curry and Norman M. Fischer
1986

I. Budgeting

A. The "State Agency" Model

1. Are institutions required to follow standard budget instructions for all state agencies with no exceptions?
2. Are budget requests, whether incremental or formula, required to reflect detailed spending plans?
3. Do detailed workload measures heavily influence the decision on institutional requests?
4. Are appropriations highly specific; either line item, or with extremely detailed spending limits or requirements?

B. The "State Controlled" Model

1. Are institutions allowed some exemptions from standard budget instructions?
2. Do budget requests involve aggregate formulas or generalized relationships and focus on total support levels, which are perceived as, aggregate spending plans?
3. Are both workload and output measures used in evaluating institutional budget request?
4. Are appropriations somewhat specific, e.g., by category or in lump sum with some limitations on expenditures?

C. The "State Aided" Model

1. Are special budget instructions used for institutions of higher education/
2. Is the focus of the budget request on state tax fund requirements (often involving a general allocation formula) with the overall budget perceived as a funding plan as opposed to a spending plan?
3. Are output measures/expectations a major factor in evaluating budget requests?
4. Is the appropriation provided on a lump sum basis with few, if any, specific provisions?

D. The "Corporate" Model

1. Are there only a limited number of procedural instructions for submitting requests for funds?
2. Does the budget concentrate on services to be provided with no consideration given to process issues?
3. Are contract amounts for services determined through external indices and negotiation with emphasis given to prior performance?
4. Are appropriations aggregated and often made through an executive intermediary for purchase of services?

II. Expenditure Oversight

A. The "State Agency" Model

1. Is expenditure oversight exercised at the department or division level?
2. Are pre-audit controls exercised over receipt and expenditure of federal funds including indirect cost allowances?
3. Must funds remaining unexpended at the end of any fiscal quarter be returned to the state unless justification is given to allow rescheduling of those funds, and do they revert to the general fund at the end of the fiscal year?
4. Are institutions expected to file detailed expenditure plans (e.g., by department/division, program, object of expenditure and fund source) by month or quarter?
5. Is prior approval required by a state control agency for such activities as purchasing, personnel, out-of-state travel, etc.?

B. The "State Controlled" Model

1. Is expenditure oversight exercised at the program level or not more than one level below the level of appropriation?
2. Is there some flexibility given to institutions regarding receipt of federal grants and contracts and use of indirect cost allowances?
3. Are restricted fund activities, e.g., auxiliary enterprises, inter-collegiate athletics, exempted from detailed allotment control although all other unrestricted expenditures regardless of fund source are subject to allotment?
4. Are institutions allowed flexibility in purchasing, personnel, out-of-state travel and engineering, but subject to general state guidelines?

C. The "State Aided" Model

1. Is the institution free to accept non-state funds with no external restrictions?
2. Are institutional allotment plans generalized and not subject to control agency revisions except in cases of overall state revenue shortfalls?
3. Are institutions ultimately responsible for repayment of state tax funds if indicated by post-audit?
4. Are all positive fund balances allowed to carry-forward to the succeeding fiscal period?

D. The "Corporate" Model

1. Are the institutions subject only to post-audit?
2. Is a periodic payment or letter of credit system used to provide funds to the institutions, i.e., no allotment system?
3. Are the institutions free to spend state funds for any lawful purpose as long as the terms of the agreement with the state is maintained?

III. Accountability Expectations

A. The "State Agency" Model

1. Is accountability expressed in process considerations such as record-keeping and reporting of workload measures?
2. Are elements such as class size, room use, and faculty/classroom contact hours reported on a routing basis?
3. Are reports required providing the results of grant and contract activities and research activities?
4. Is the institution required to stay within a staffing table and report any deviations?

B. The "State Controlled" Model

1. Is accountability expressed through some combination of workload and output measurements?
2. Is activity reporting at a summary level, e.g., enrollments, student credit hours?
3. Is some flexibility granted to institutions in staffing patterns or number of staff years?
4. Is expenditure accountability primarily on a post-audit basis?

C. The "State Aided" Model

1. Is accountability primarily expressed in terms of program effectiveness measures?
2. Has a system been established to provide for reporting of accomplishments, e.g., is some form of assessment system in place?
3. Are institutions provided freedom in determining staffing levels?
4. Is expenditure accountability strictly on a post-audit basis?

D. The "Corporate" Model

1. Is payment of state funds to the institution in any way contingent upon meeting contract provisions for production?
2. Is assessment of program effectiveness a part of the funding process?
3. Is there a clear written agreement between the institution and the state or its agent as to the accountability requirements?

IV. Tuition, Fees, and Pricing Policy

A. The "State Agency" Model

1. Are all general tuition and related fees prescribed by the legislature?
2. Is all fee revenue, including normally restricted fund revenue, deposited in the state general fund?
3. Are there strict rules governing charges for self-sustaining courses, laboratory fees, etc.?
4. Is there a very specific legislative pricing policy?

B. The "State Controlled" Model

1. Are institutions allowed to set tuition and general fees within a range authorized by the legislature (or in conjunction with state budget policy)?
2. Does deposit of fee income vary by type of revenue, e.g., are some revenues such as student services fees retained locally while general tuition payments are deposited in the state general fund?
3. Is the institution given some flexibility in establishing rates for self-sustaining courses, laboratory fees, etc.?
4. Is there a specific pricing policy, which may or may not be legislated?

C. The "State Aided" Model

1. Are general tuition and fees set by the institutions?
2. Are institutions allowed to retain all tuition and fee collections locally?
3. Does increased or reduced local revenue through tuition or fee collections have any effect on the level of state support, either in the current fiscal period or the succeeding fiscal period?
4. Is there a general pricing policy, normally not legislated?

D. The "Corporate" Model

1. Does the institution have total control of all funds, including tuition, fees, and charges for services?
2. Is the institution free to set tuition and fees subject only the terms of a contract with the state?

V. Financing Options

A. The "State Agency" Model

1. Has the state assumed total responsibility for funding all operations of the institutions?
2. Does the state treat the mix of funds (taxes, student fees, and grants and contracts) on an interchangeable basis?
3. Are there no incentives for raising additional revenue? In other words, does all added revenue offset state tax funds?

B. The "State Controlled" Model

1. Has the state assumed responsibility for funding all education and general operations (including hospitals where applicable)?
2. Does the state consider differences between sources of funding in its financing policy, i.e., are grants and contracts considered separately from student fee and tax-fund considerations?
3. Are there few incentives for raising additional revenue? In other words, is there some allowance for use of the additional revenue without loss of appropriation?

C. The "State Aided" Model

1. Has the state assumed responsibility only for state tax fund support?
2. Are institutions free to vary the mix of funding sources in determining their operating levels?
3. Do several incentives exist for attracting and retaining additional income?

D. The "Corporate" Model

1. Has the state assumed no responsibility whatsoever for the maintenance of the institution of higher education?
2. Does the institution have freedom to raise funds for operations and endowments subject only to the terms of the contract with the state?

VI. Salary Administration

A. The "State Agency" Model

1. Are salary levels and the method of distribution of increases dictated by a state control agency?
2. Are all salary savings recaptured by the state?
3. Are all personnel, including faculty, encompassed within a centralized state personnel system?

B. The "State Controlled" Model

1. Are institutions given some degree of flexibility in distributing salary increases to faculty and exempt staff?
2. Are institutions allowed to utilize salary savings to provide additional salary increases?
3. Are faculty and professional administrators exempt from civil service?

C. The "State Aided" Model

1. Are salary increases factored into the overall state tax funds provided to institutions with institutions allowed complete flexibility in setting salary levels?
2. Are institutions completely free to augment state-funded salary increases with additional local funds without affecting carry forward cost levels?
3. Is the civil service system institutionally based or highly decentralized?

D. The "Corporate" Model

1. Is salary administration strictly an institutional matter?

VII. Enrollment Policy

A. The "State Agency" Model

1. Does the legislature dictate the number and type of enrollments (resident, non-resident, undergraduate, graduate, transfer, new) by institute?
2. Are there strict penalties for under- or over-enrolling?

3. Has the state enacted statutory admissions requirements for each institution?

B. The "State Controlled" Model
1. Does the legislature set the aggregate number of students by institution?
2. Is a tolerance range provided to institutions in attempting to adhere to legislative enrollment assumptions?
3. Do institutions have flexibility to establish admissions requirements under some form of external supervision?

C. The "State Aided" Model
1. Does the state have an enrollment policy, which is related to aggregate service levels as opposed to individual targets for each institution?
2. Does over- or under-enrollment have no effect on the level of state tax fund support in the current fiscal period?
3. Does the institution have complete authority to establish its own admissions standards?

D. The "Corporate" Model
1. Is the relationship between the state and the institution one of providing a pre-determined number of student spaces for its residents with overall enrollment at institutions strictly the prerogative of those institutions?

VIII. Program Review/Approval

A. The "State Agency" Model
1. Does a non-higher education state control agency have the power to approve new programs?
2. Does a non-higher education state control agency have the authority to eliminate programs?
3. Does a non-higher education state control agency have the authority to direct institutions to initiate new programs?

B. The "State Controlled" Model
1. Does a state higher education agency have the power to approve new programs?
2. Does a state higher education agency have the authority to eliminate programs?
3. Does a state higher education agency have the authority to direct institutions to initiate new programs?

C. The "State Aided" Model
1. Is there a sense of partnership between the state higher education agency and the institution in review of new programs? In other words, are all affected institutions involved in the process and concensus building is attempted?
2. Is the review of existing programs primarily oriented to institutional self-duty with general state oversight?
3. Is the initiation of new programs a matter that either the institution or the state (through contracting) might establish?

D. The "Corporate" Model
1. Is program development initiation and continuation strictly a matter of institutional concern?

APPENDIX 5

Legislatively Calculated Budget
Compared to Allocation by Unit & Program

1) Appropriation Compared to Allocation
2) General Fund and Millage Revenue Allocation
3) Current Unrestricted Expenditures by Program

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Legislative Fiscal Analyst
CLAYTON SCHENCK

October 20, 1999

TO: Joint Subcommittee on Postsecondary Education Policy and Budget

FROM: Sandy Whitney, Senior Analyst

RE: Legislatively Calculated Budget Compared to Allocations by Unit and Program

The purpose of this report is to complete the continuum of information from existing university system budgeting methods, as presented by Rod Sundsted, through the lump sum appropriation and the subsequent allocations by the Board of Regents to the Office of the Commissioner of Higher Education (OCHE), units, and agencies. This report builds on the information base provided in the report, "Lump Sum Funding - History and Background Information," presented at the September 23rd PEPB meeting by: 1) showing how the fiscal 2000 appropriation was allocated by the university system; 2) detailing the fiscal 2000 general fund and millage revenue allocation by unit and per resident student; and 3) providing a historical comparison of current unrestricted expenditures by program within the units of the university system.

APPROPRIATION COMPARED TO ALLOCATION

Table 1 shows how the legislative appropriations for fiscal 2000 were allocated by the Board of Regents to each program in OCHE, nonbeneficiary students in tribal colleges, distance learning, family practice residency program, the university units, and the agencies. The last two columns in the table provide the general fund differences between appropriation and allocation as well as the percentage differences.

Note that nearly all the general fund differences from the original appropriation are the result of allocation of the pay plan shown on the second line from the bottom of the table. The one exception is in the OCHE administration program where nine employees received pay raises from one to three percent greater that those appropriated in House Bill 13. The major portion of the general fund for these additional increases was offset by reductions in the Talent Search program. This offset was possible because the OCHE budget is included in the biennial, lump sum appropriation, which allows maximum management flexibility within the university system.

Table 1
Montana University System Appropriation Compared to the Operating Plan
Fiscal 2000

Agency/Program	FY2001 FTE	Fiscal 2000 Appropriation General Fund	Tuition/Other**	Fed/Other***	Total Budget	Fiscal 2000 Operating Plan General Fund	Tuition/Other**	ed-St Spec**	Total Budget	General Fund Difference	Percent Change
Commissioner of Higher Ed.											
Comm of Higher Ed Admin	15 40	$ 1,151,611			$ 1,151,611	$ 1 187,301			$ 1,187,301	$ 35,690	3 10%
Performance Audit		80,000				80,000			80,000	-	0 00%
Student Assistance		7,451,310		140,599	7,591 909	7 451,310		70,414	7,521,724	-	0 00%
DDE Math & Science				264 449	264 449			363,143	363,143	-	
Community Colleges		5,591 640			5,591 640	5 701 946			5,701 946	110,306	1 97%
Talent Search	10 95	93,760		473,736	567 496	83 042		468,337	551,379	(10,718)	-11 43%
Perkins	4 00	80,000		8 890,000	8 970 000	81,566		9,039,539	9 121,105	1,566	1 96%
Guaranteed Student Loan	43 20			28 077,436	28 077 436			28,118,273	28 118 273		
Board of Regents	0	43,825		0	43,825	43,825		0	43,825	-	0 00%
TOTAL OCHE	73 55	$ 14 492,146		$ 37,846,220	$ 52 258 366	$ 14 628 990		$38,059 706	$ 52 688,696	136,844	0 94%
Program 9 - Distribution											
Nonbeneficiary Students-Tribal Coll		$ 417,000			$ 417 000	$ 417 000			$ 417,000	-	0 00%
Distance Learning in Lump		200,000			200 000	200 000			200 000	-	0 00%
Family Practice Residency in Lump		295 600			295 600	295 600			295 600	-	0 00%
University Units & COT in Lump*	3,502 73	91,111,002	[illegible]	14,809,000	215,449,523	92,747,326	$110,073,872	14,809,000	218,630,198	2 636 324	2 89%
SUBTOTAL STUDENT EDUC *	3 502 73	$ 92,023 602	$ 109 529,521	$ 14 809 000	$216 362,123	$ 94 659 926	$110,073,872	$14,809,000	$219,542 798	$ 2,636 324	2 86%
Ag Experiment Station	231 79	$ 8 639 885	$ 3 040 772		$ 11 680 657	$ 8 875 976	$ 3,052,051		$ 11 928 027	$ 236 091	2 73%
Extension Service	118 58	3 855,089	2 228 255		6 083 344	3 987 593	2,228,255		6 215 848	132 504	3 44%
Forestry & Conservation	13 74	840 714	4 923		845 637	858 444	4 923		863 367	17,730	2 11%
Bureau of Mines	35 74	1 441 082	59 000	656 000	2 156 082	1 470 263	59 000	600,000	2,129 263	29,181	2 02%
Fire Services Training	6 80	334,868	4,097		338,965	344,057	4,097		348,154	9 189	2 74%
SUBTOTAL AGENCIES	406 65	$ 15,111,638	$ 5 337 047	$ 656 000	$ 21 104 685	$ 15 536 333	$ 5,348,326	$ 600,000	$ 21 484 659	$ 424 695	2 81%
TOTAL DISTRIBUTIONS HB 2	3 909 38	$107 135 240	$114 866 568	$ 15 465 000	$237 466 [illegible]	$110 196 259	$115 422 198	$15 409 000	$241 027 457	$ 3 061,019	2 86%
TOTAL LUMP SUM MUS-OCH (Excluding CC's, Nonbeneficiary Students in Tribal Colleges, and Agencies)	3 576 28	$100 507 108	$109 529 521	$ 52 655 220	$262 611 849	$103 169 970	$110 073 872	$52 868 706	$ 266 112 548	$ 2,662,862	2 65%
TOT UNIVERSITY SYSTEM	3,982 93	$121,627 386	$114 866 568	$ 53,311 220	$289 725,174	$124 825 249	$115 422,198	$53,468,706	$293 716,153	$ 3,197,863	2 63%
Pay Plan HB 13	0	3,197,874	1,595,010	0	4,792,884	-	-	-	-	(3 197 874)	-100 00%
TOT HB2 & HB 13	3,982 93	$124,825,260	$116,461,578	$ 53,311,220	$294,518,058	$124,825,249	$115,422,198	$53,468,706	$293,716,153	$ (11)	0 00%

* Approp includes $3 [illegible] for Fire Services Training School audit costs - shown in FSTS operating budget System Op Plan excludes $1 2 million GF transferred from fiscal 2001 to UM-Missoula Op Plan

**Tuition, interest proprietary, funds and federal funds in the Ag Experiment Station and Extension are university funds appropriated in language

***Proprietary federal and state special funds in House Bill 2

****Totals may not tie to main table due to rounding

The Board of Regents has also adjusted the tuition, state special revenue, and federal funds allocated to the university system. The total tuition appropriation, including pay plan, is $111 million, while the allocation is $110 million, resulting in $1.0 million tuition spending authority that can be allocated at a later date when actual resident and nonresident enrollments and tuition receipts are known.

State special revenue allocated to the Bureau of Mines is $56,000 less than appropriated. The appropriation is the result of appropriation at the old statutory level of $666,000 Resource Indemnity Trust (RIT) funds, less vacancy savings. However, the legislature changed the allocation of RIT funds, and approved the use of $600,000 for the Bureau of Mines Groundwater program. The latter amount is reflected in the Regents allocation, and the resulting difference is unused spending authority.

Federal revenue allocated by the Board of Regents to OCHE is $213,486 higher than that in House Bill 2. This is the net result of: 1) budget amendments approved by the Regents that will be submitted to the Legislative Finance Committee; and 2) a 50 percent decrease in Student Assistance because the federal funds for the State Student Incentive Grant (SSIG) program are being reduced, resulting in over $70,000 of unused federal spending authority.

GENERAL FUND AND MILLAGE REVENUE ALLOCATION

The fiscal 2000 allocation of general fund and millage to each unit, compared to fiscal 1999 actual expenditures, is shown in Table 2. These funds were allocated by the "Montana University System Cost Allocation Model," as presented by Dr. Dick Crofts on September 23, 1999. As the table shows, the university system units received percentage increases that varied from the 4.5 percent increase in total state funds. For example, the allocation to Western Montana College of the University of Montana (Western) was 1.4 percent less than actual expenditures in fiscal 1999. MSU-Billings received 0.1 percent additional funding, while Helena COT received 15.1 percent more state funds than expended in fiscal 1999.

Table 2
General Fund/Millage Allocation in Lump Sum
Actual Fiscal 1999 and Fiscal 2000 Operating Plan

Units/COT	FY 1999 Expenditure	FY 2000 Op Plan	Percent Change
MSU-Bozeman	$ 35,254,876	$ 36,490,509	3.50%
MSU-Billings	13,535,338	13,555,560	0.15%
MSU-Northern	6,167,115	6,589,154	6.84%
Great Falls COT	2,494,941	2,656,705	6.48%
UM-Missoula	31,852,311	33,885,542	6.38%
Mt. Tech of UM	8,585,255	9,197,736	7.13%
UM-Western	4,221,320	4,163,084	-1.38%
Helena COT	1,752,986	2,018,036	15.12%
Totals	$ 103,864,142	$ 108,556,326	4.52%

Resident student enrollment is one of the factors used in the Cost Allocation Model to determine the state funds distributed to each unit. Table 3 shows the actual resident FTE in fiscal 1999 and the fiscal 2000 FTE estimated for allocation purposes. As can be seen in the table, the anticipated increase in total FTE from fiscal 1999 to fiscal 2000 is 0.8 percent, a percentage equal to that anticipated during legislature. However, enrollment estimates vary from no increase at MSU-Bozeman to a 3.3 percent increase at Western. Actual enrollment data for the fall semester is not yet available for purposes of comparison.

Table 3
Resident Student FTE
Actual Fiscal 1999 and Estimated 2000

Units/COT	FY 1999 Resident FTE	FY 2000 Est. Res. FTE	Percent Change
MSU-Bozeman	7,601	7,601	0.00%
MSU-Billings	3,578	3,603	0.70%
MSU-Northern	1,411	1,424	0.92%
Great Falls COT	745	758	1.74%
UM-Missoula	7,895	7,960	0.82%
Mt. Tech of UM	1,710	1,753	2.51%
UM-Western	843	871	3.32%
Helena COT	652	654	0.31%
Totals	24,435	24,624	0.77%

Table 4 shows the state funds allocation per resident FTE for each unit. The 3.7 percent average funding increase per FTE masks wide variations among the units. For example, Western is allocated 4.5 percent fewer state dollars per student, Billings receives 0.5 percent less state funding per FTE, and the Helena COT receives 14.8 percent more funding per FTE. While these funding changes per FTE vary somewhat from the percentage allocations to each unit, as shown in Table 2, the changes are of similar magnitudes. However, the funding changes do not follow the pattern seen in resident enrollment changes.

Table 4
Lump Sum Funds per Resident Student FTE
Actual Fiscal 1999 and Estimated 2000

Unit/COT	FY 1999 State $/Res.	FY 2000 State $/Res.	Percent Change
MSU-Bozeman	$ 4,638	$ 4,801	3.50%
MSU-Billings	3,783	3,762	-0.55%
MSU-Northern	4,371	4,627	5.87%
Great Falls COT	3,349	3,505	4.66%
UM-Missoula	4,034	4,257	5.51%
Mt. Tech of UM	5,021	5,247	4.51%
UM-Western	5,007	4,780	-4.55%
Helena COT	2,689	3,086	14.77%
Totals	$ 4,251	$ 4,409	3.72%

CURRENT UNRESTRICTED EXPENDITURES BY PROGRAM

As explained in the "Montana University System Cost Allocation Model," state funds are allocated to each unit, which is then responsible for budgeting by program to arrive at an operating plan that may be approved by the Board of Regents. Each unit combines the state funds, tuition, and other revenue into current unrestricted operating funds and budgets the total by program in the general operating budget. As shown in Table 5, these programs include instruction, research, academic support, institutional support, and plant operations and maintenance.

Table 5 also shows the sum of current unrestricted operating funds expended/budgeted by program in all the units from fiscal 1995 through fiscal 2000. In fiscal year 2000, as shown in the second portion of the table; 1) over half of the budget is allocated to instruction; 2) 11.2 percent is allocated to academic support, which includes libraries; 3) about 8.0 percent is budgeted for the institutional support program, which is the campus administration; and 4) 11.3 percent is allocated to plant operations and maintenance. These percentage allocations are very similar across all campuses. However, University of Montana campuses generally allocate over 1.0 percent more to instruction and over 1.0 percent less to plant operations and maintenance than do Montana State University campuses.

While the percentage allocations by program are similar across all campuses, the programs have increased by varying percentages across fiscal years. The bottom portion of Table 5 shows that the average five-year increase is 30.3 percent, but that: 1) instruction increased by nearly 35.0 percent; 2) public service increased by 40.4 percent; 3) institutional support (which is administration) increased by 16.8 percent; 4) plant operations and maintenance increased by 20.2 percent; and 5) scholarships and fellowships (which are fee waivers) increased by 59.9 percent.

Table 5
University System Current Unrestricted Expenditures by Program and Totals
Fiscal Years 1995 through 2000

Program Expenditures	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	OP Plan 2000
Instruction	$ 91,103,781	$ 97,220,919	$ 104,326,178	$ 108,531,265	$ 114,575,973	$ 122,914,788
Research	1,477,663	1,557,920	1,672,466	1,704,305	1,595,643	1,662,920
Public Service	1,240,661	1,278,842	1,430,693	1,602,751	1,736,150	1,741,654
Academic Support	18,931,891	20,663,231	22,295,327	23,259,268	24,531,096	24,815,100
Student Services	14 837,421	15,482,759	16,303,460	16,848,015	17,392,970	17,529,753
Institutional Support	15,063,313	15,189 877	16,629,917	16,961,805	16,509,038	17,596,134
Plant Operations/Maintenance	20,715,464	21,271,141	22,170,637	21,988,450	23,816,055	24,890,633
Scholarships/Fellowships	5,925,416	6,927,815	7,463,124	8,399,023	8,764,787	9,472,764
Other	-	-	-	-	-	-
Total Expenditures	$ 169,295,610	$ 179,592,504	$ 192,291,802	$ 199,294,882	$ 208,921,712	$ 220,623,746

Percent Totals University System	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	OP Plan 2000
Instruction	53 81%	54 13%	54 25%	54 46%	54 84%	55 71%
Research	0 87%	0 87%	0 87%	0 86%	0 76%	0 75%
Public Service	0 73%	0 71%	0 74%	0 80%	0 83%	0 79%
Academic Support	11 18%	11 51%	11 59%	11 67%	11 74%	11 25%
Student Services	8 76%	8 62%	8 48%	8 45%	8 33%	7 95%
Institutional Support	8 90%	8 46%	8 65%	8 51%	7 90%	7 98%
Plant Operations/Maintenance	12 24%	11 84%	11 53%	11 03%	11 40%	11 28%
Scholarships/Fellowships	3 50%	3 86%	3 88%	4 21%	4 20%	4 29%
Other	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Total Expenditures	100 00%	100 00%	100 00%	100 00%	100 00%	100 00%

Percentage Changes from FY95	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	OP Plan 2000
Instruction		6 71%	14 51%	19 13%	25 76%	34 92%
Research		5 43%	13 18%	15 34%	7 98%	12 54%
Public Service		3 08%	15 32%	29 19%	39 94%	40 38%
Academic Support		9 15%	17 77%	22 86%	29 58%	31 08%
Student Services		4 35%	9 88%	13 55%	17 22%	18 15%
Institutional Support		0 84%	10 40%	12.60%	9 60%	16 81%
Plant Operations/Maintenance		2 68%	7 02%	6 15%	14 97%	20 15%
Scholarships/Fellowships		16 92%	25 95%	41 75%	47 92%	59 87%
Other		0.00%	0.00%	0.00%	0.00%	0.00%
Total Expenditures		6 08%	13 58%	17 72%	23 41%	30 32%

The major reason for the greater than average increase in instruction is the increases in faculty salaries resulting from the collaborative agreements on the campuses. The large increase in scholarships and fellowships stems from the greater cost of those fee waivers resulting from compounding 7.0 percent annual increases in student tuition during the mid to late 1990's. These higher-than-average increases were offset by relatively small increases in student services, institutional support, and plant operations and maintenance.

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APPENDIX 6

Montana University System Compared to Systems in Selected States

1) Students and Faculty
2) Current Unrestricted Funds
3) Instruction Program Expenditures
4) Summary

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Legislative Fiscal Analyst
CLAYTON SCHENCK

January 28, 2000

To: Joint Subcommittee on Postsecondary Education Policy and Budget

From: Sandy Whitney, Senior Fiscal Analyst

Re: Montana University System Compared to Systems in Selected States

The purpose of this report is to compare the financing of the Montana University System (MUS) to financing in selected states that operate university units similar to those in Montana. The comparison data are: 1) information on students, faculty, and faculty salaries; 2) current unrestricted funds; and 3) instruction program expenditures.

STUDENTS AND FACULTY

Part A of Table 1 shows student and faculty data by state for fiscal 1999. The student undergraduate and graduate enrollment, excluding medical school enrollment, ranges from a low of 21,927 FTE in South Dakota to a high of 95,327 in Arizona.

Student Faculty Ratios

South Dakota maintains the smallest system as measured by student FTE, and it has the lowest student faculty ratio at 15.74. Two of the three largest systems, Oregon and Washington, have the highest student faculty ratios at 19.71 and 19.53, respectively. The moderately sized systems in Montana, Idaho, New Mexico, and North Dakota, as well as the larger system in Arizona, maintain student faculty ratios between 16.47 and 19.25.

The comparison ratios show how larger and smaller systems are allocating their resources. They could also be used as measures of productivity, where a higher ratio could mean that faculty are more productive and therefore more efficient, as defined in the "Methods of State/University System Management" report dated October 20, 1999. In addition, as noted in that report, the ratios could be used as measures of quality, where a lower ratio could mean faculty members teach fewer students, resulting in more faculty time per student and therefore more quality and effectiveness.

While the data do not define the optimal size for efficient or effective instruction, as measured by student faculty ratios, they do suggest a possible emphasis on the two competing public policies. First, the data show that the smallest systems do not budget for instruction as efficiently as the larger

systems. The data also suggest that Montana's faculty workload efficiency is nearly equal to that in the larger systems in Idaho, Oregon, and Washington. Montana's public policy for higher education includes an emphasis on increasing productivity and faculty efficiency. As demonstrated by the increase in student/faculty ratio resulting from the 1994-1995 negotiated salary and workload agreements at Montana Tech of the University of Montana, one could conclude that the Board of Regents has more efficiently allocated lump sum funds to instruction and has increased productivity in the system.

The second public policy is one that addresses the quality or effectiveness of education received by the students. This public policy may require lower student/faculty ratios as a measure of quality, programming differences that may require different student/faculty ratios, or changes in any other aspect of university system operation. The negotiated agreements of 1994-1995 addressed all these issues, but the data here address only the student faculty ratio. For example, the negotiated salary and workload agreements at the University of Montana at Missoula put an emphasis on quality of education by reducing the student/faculty ratio. Therefore, the states with the smaller student/faculty ratios <u>might</u> be considered to have higher quality education, as measured by those ratios, because each student would theoretically receive more instructor time.

Table 1
Comparison of Higher Education Systems in Montana and Other States****
Fiscal 1999

	Montana	Arizona	Idaho	New Mexico	North Dakota***	Oregon	South Dakota	Washington***
				Part A - Student and Faculty				
Student Annual FTE	31,383	95,327	36,821	37,826	29,612	57,213	21,927	81,794
Faculty Annual FTE*	1,655	5,487	1,913	2,297	1,667	2,903	1,393	4,189
Student/Faculty Ratio	18.97	17.37	19.25	16.47	17.76	19.71	15.74	19.53
Average Faculty Salary + Benefits**	$ 57,150	$ 64,745	$ 61,530	$ 57,577	$ 53,900	$ 64,600	$ 52,391	$ 68,608
% Other States Higher (Lower)		13.29%	7.66%	0.75%	-5.69%	13.04%	-8.33%	20.05%
Faculty Salary/Student FTE	$ 3,013	$ 3,726	$ 3,197	$ 3,497	$ 3,034	$ 3,278	$ 3,329	$ 3,514
% Other States Higher (Lower)		23.67%	6.08%	16.05%	0.70%	8.80%	10.47%	16.61%
				Part B - Current Unrestricted Funds				
Total Current Unrestricted Funds	$ 209,316,004	$ 822,100,000	$ 275,993,900	$ 400,014,921	$ 200,940,524	$ 555,859,666	$ 163,700,000	$ 823,625,000
State Funds**	104,694,890	629,400,000	212,200,500	305,601,152	130,576,860	263,288,292	116,700,000	576,496,000
Tuition/Other	104,621,114	192,700,000	63,793,400	94,413,769	70,363,664	292,571,374	47,000,000	247,129,000
Percent State Funds	50.02%	76.56%	76.89%	76.40%	64.98%	47.37%	71.29%	69.99%
Current Unrestricted $/Student FTE	$ 6,670	$ 8,624	$ 7,496	$ 10,575	$ 6,786	$ 9,716	$ 7,466	$ 10,070
$ Other States Greater Than MT		1,954	826	3,905	116	3,046	796	3,400
% Other States Greater Than MT		29.30%	12.38%	58.55%	1.74%	45.67%	11.93%	50.97%
Relative State $/FTE	$ 3,336	$ 6,603	$ 5,763	$ 8,079	$ 4,410	$ 4,602	$ 5,322	$ 7,048
State $ FTE Difference from MT		3,266	2,427	4,743	1,074	1,266	1,986	3,712
Relative Tuition Load/FTE	$ 3,334	$ 2,021	$ 1,733	$ 2,496	$ 2,376	$ 5,114	$ 2,143	$ 3,021
$ Tuition Difference from MT		(1,312)	(1,601)	(838)	(957)	1,780	(1,190)	(312)
				Part C - Instruction Program Expenditures				
Instruction Program Funds	$ 114,575,973	$ 455,400,000	$ 154,045,100	$ 201,737,000	$ 104,158,484	$ 306,564,609	$ 86,100,000	$ 469,387,000
State Funds	57,308,178	266,000,000	lump-sum	186,760,000	33,794,820	175,968,086	50,500,000	317,703,000
Tuition/Other	57,267,795	189,000,000	lump-sum	14,977,000	70,363,664	130,596,523	35,600,000	151,684,000
Percent State Funds	50.02%	58.41%	NA	92.58%	32.45%	57.40%	58.65%	67.68%
Instruction % of Total	54.74%	55.39%	55.81%	50.43%	51.84%	55.15%	52.60%	56.99%
Instruction $/Student FTE	$ 3,651	$ 4,777	$ 4,184	$ 5,333	$ 3,517	$ 5,358	$ 3,927	$ 5,739
$ Other States Greater Than MT		1,126	533	1,682	(133)	1,707	276	2,088
% Other States Greater Than MT		30.85%	14.59%	46.08%	-3.65%	46.77%	7.55%	57.18%

*Idaho & Oregon faculty FTE are academic year reported FTE adjusted for summer school based on student credit hours percentages
**NM faculty salary=average 4 peers - state funds exclude def. maint. & special equipment. ID current unrestricted state funds include gifts & endowments
***All North Dakota & Washington data are academic year only - summer school faculty, student FTE, and expenditures excluded
North Dakota FTE students adjusted upward to reflect 15 credit hours/FTE rather than reported 16 credit hours/FTE
****Medical schools excluded

While Montana does not have an objective way to determine quality of instruction, the Board of Regents is currently investigating objective measures, as presented by Dr. Joyce Scott at the November 4, 1999 Joint Subcommittee on Postsecondary Education Policy and Budget (PEPB) meeting. These measures, when developed, may help to determine if efficient lump sum allocations do indeed result in quality.

Faculty Salaries

Table 1, Part A also shows that the average faculty salaries plus benefits, as reported by the states, range from $52,391 in South Dakota to $68,608 in Washington. As the table shows, Montana's average package of $57,150 is within 8 percent of the salary packages in Idaho, New Mexico, North Dakota, and South Dakota. The larger systems in Arizona, Oregon and Washington pay average salaries and benefits of 13 to 20 percent more than those paid in Montana.

The third section of Part A factors out differences in workload by dividing the average faculty salary by the student/faculty ratio, thus showing the faculty dollars spent per student. By this measure, Montana has the lowest salary/benefits package among the comparison states, although it is within 9 percent of those in Idaho, North Dakota, and Oregon. Montana is competitive with Idaho and Oregon, in spite of higher salaries in those two states, because Montana has a lower workload.

Both North and South Dakota have lower workloads and lower salaries and benefits, resulting in more faculty dollars spent per student in those states than in Montana. North Dakota salaries per student are within 1 percent of those in Montana. However, faculty salaries and benefits per student in South Dakota are over 10 percent higher than those in Montana. It appears that Montana salaries and benefits, although they are over 30 percent higher than they were at the time of the negotiated agreements in 1994/1995, are still only marginally competitive with those paid in the comparison states.

CURRENT UNRESTRICTED FUNDS

An analysis of the total current unrestricted funds, which is the university system operating budget, is shown in Part B of Table 1. The public policies illustrated in each state include: 1) the total state support compared to tuition; and 2) the total expenditures, state support, and tuition per student FTE. The relative position of the Montana higher education system among the comparison states is discussed in the sections below.

State Support Compared to Tuition

Montana's policy of state support of the university system at 50 percent of current unrestricted operating funds is approximately equal to Oregon's policy of 47 percent. This means that, overall, the state bears half the cost of education and the students bear half through their tuition. These two states have the most reliance on tuition among the comparison states.

The remaining comparison states can be divided into two groups, depending on the public policies pursued. These groups are: 1) Arizona, Idaho, and New Mexico, which utilize tuition and state funding differently from the procedures used in Montana; and 2) North Dakota, South Dakota, and Washington, which utilize tuition and state funding in a manner similar to Montana but provide state support at two thirds to nearly three fourths of the total cost of operations.

Arizona, Idaho, and New Mexico

The first section of Part B in Table 1 shows that Arizona, Idaho, and New Mexico provide state funds equal to approximately 77 percent of the total current unrestricted funding. However, these funding percentages are high because of two funding policies not used in Montana. First, Arizona does not utilize all of its tuition in the current unrestricted operating fund, but allows a portion of the tuition revenues to be used for debt service, financial aid, and other selected programs. Based on Northern Arizona University, which is a peer of MSU-Bozeman and UM-Missoula, approximately 37 percent of the tuition is used to fund areas outside the current unrestricted operating fund. If all tuition were used in the current unrestricted operating fund, and if state support were reduced by a like amount, the state support of the university system would be approximately 68 percent in Arizona.

Idaho includes $19.8 million in endowment and other funds in the state current unrestricted funding. In Montana, such endowment funds, primarily returns from school lands, are used for the auxiliary funds and for plant fund bond payments, rather than for the current unrestricted operating fund. If the Idaho endowment funds were used in debt service and the difference paid by student tuition in the current unrestricted operating fund, as is the case in Montana, the state support would be approximately 69 percent in Idaho.

Some, but not all, of the New Mexico campuses include internal service funds in their state current unrestricted funds, while Montana consistently uses off-budget recharges for these operations. The New Mexico funds could not be extracted from the state funds, but it is clear that the New Mexico percentage of state funds is somewhat overstated in the table.
Montana, as a matter of public policy, uses all its tuition in the current operating fund and all its endowment funds in other areas. There is nothing preventing the Board of Regents from using either tuition or endowment funds in other ways since both types of funds are constitutionally under the control of the university system. However, regardless of how the university system allocates university funds, there is nothing requiring the state to provide any specific amount of state funds for the operation of the university system. The state controls state funds, and it has supported the current unrestricted operating fund at 50 percent. Therefore, the funding system in Montana requires cooperation between the Regents and the state.

North Dakota, South Dakota, and Washington

North Dakota, South Dakota, and Washington all use primarily state funds and tuition for the current unrestricted operating funds, and they fund the system with 65 percent to 71 percent state funds. These states use approximately the same state funds/tuition funding mix as do Arizona, Idaho, and New Mexico when compensation is made for alternative public policies, as noted above. Therefore, all the

comparison states except Montana and Oregon basically fund the university system with 65 to 71 percent state funds and 30 to 35 percent student tuition.

Total Expenditures per Student

The above percentages must be viewed within the context of the total number of dollars available per student for each system, as shown in the lower portion of Part B in Table 1. In fiscal 1999, the total current unrestricted operating funds per student were $6,670 in Montana, which is approximately equal to the per student expenditures in North Dakota. All of the other comparison states provided their students with 12 to 58 percent more funding per FTE. However, the large per student funding differences are primarily in the provision of state funds. There is much less difference between the states in the tuition load per student.

For example, New Mexico spends the most at $10,575 per student or $3,905 more than the per student amount of $6,670 in Montana. The relative state support for the university system operation in New Mexico is $4,743 greater than in Montana, as shown in the lower half of Table 1, Part B. The average relative tuition difference for each individual student is $838, or the difference between $3,334 in Montana and $2,496 in New Mexico, as shown in the last line of Part B. All the other comparison states except Oregon also have relative tuition loads less than in Montana by amounts varying from $312 in Washington to $1,601 in Idaho.

Two policy conclusions can be drawn from these data. First, given the current 50 percent state support for the university system, the state has chosen to provide state support at rates varying from $1,074 to $4,743/total FTE less than any other comparison state, resulting in a total funding per student approximately equal to that in North Dakota. Second, the Board of Regents has chosen to operate the system at the lowest funding level among the comparison states, rather than increase tuition further beyond the comparison states to increase the budget, as shown in the bottom two lines of Part B.

The apparent similarity between Montana and North Dakota that distinguishes them from all the other comparison states is that both provide constitutional autonomy for the university system, as noted in the report, "Governance, Budget, and Appropriations Comparisons." The difference between them is that the state/Regents higher education policies in North Dakota have resulted in a greater percentage of total state support and a lower level of total tuition revenue than in Montana. A large share of the difference is that the Regents tuition policy in North Dakota emphasizes attracting non-residents through lower non-resident tuition, which will be discussed later in the report on "Peer Unit Comparisons."

INSTRUCTION PROGRAM EXPENDITURES

The instruction program analysis is found in Part C of Table 1. The percentage of state funds used to fund instruction varies from 32 to 93 percent, depending on the state policies for the use of state funds and tuition. For example, only Montana co-mingles state funds and tuition in the current unrestricted operating fund and funds all programs proportionately. Arizona and North Dakota earmark virtually all the tuition for instruction and make up the difference with state funds. New Mexico uses very little of its tuition in instruction, preferring instead to fund that program primarily with state funds. Oregon

funds the instruction program with state funds at a higher percentage than it funds the total current unrestricted operating fund. as shown in Part B of the table, while South Dakota and Washington fund instruction with state funds at a lower rate.

While the policies vary, all states except Montana and New Mexico use tuition in some way to increase the spending for instruction. However, the net result is that all states spend between the 50 percent in New Mexico and the 57 percent in Washington of all available current unrestricted funding on instruction, as shown in the center portion of Part C, Table 1.

The reason for the lower percentage of current unrestricted operating funds for instruction in New Mexico is not that the state spends less on instruction. Instead, it has more total current unrestricted funds to spend, as shown in Part B. While it spends $1,682 more funds on instruction than Montana, New Mexico generally spends the remainder of the $4,743 additional current unrestricted funds in other programs. This is demonstrated in the lower portion of Part C by the comparison of the instruction dollars per student in all the states. Student expenditures on instruction range from $3,517 in North Dakota to $5,739 in Washington, for a difference of $2,222 per student. This compares to a difference of $3,905 in current unrestricted funds between Montana, which has the lowest total budget per student and New Mexico, where the budget per FTE is the highest, as shown in Part B.

SUMMARY

The PEPB may wish to discuss the policy issues reviewed in this report. A number of questions that could be discussed with members of the Board of Regents and the Office of the Commissioner of Higher Education are summarized as follows:

1) The Montana Board of Regents has allocated lump sum funds to instruction, as measured by a student/faculty ratio approximately equal to the student/faculty ratios in larger systems such as Idaho, Oregon, and Washington. Is this a desired policy of efficiency, or should student/faculty ratios be closer to those in the medium to smaller systems in New Mexico, North Dakota, or South Dakota, to encourage quality?

2) Are Montana faculty salaries competitive enough, either on an absolute or on a workload-adjusted basis, to allow Montana to hire and retain quality professors?

3) Is state support at approximately 50 percent of the university system current unrestricted operating funds sufficient, given that most other comparison states fund at a higher level, thus resulting in lower relative total tuition support?

4) The current unrestricted funding level in Montana is the lowest among the comparison states. Is this an indication of efficient lump sum management when compared to systems in the other states?

5) If funding increases are required, should the state increase funding, should tuition increase, or should the policy be one of 50 percent sharing, as is now the case?

6) Does Montana's total instruction per FTE, which is the second lowest among the comparison states, indicate efficiency as mentioned above, or is it an indication that the student/faculty ratio may be too high for quality and/or salaries too low to be competitive?

7) If more dollars per student were available to the system, should those funds be used primarily to increase instruction or used in some other way as has been done in other comparison states?

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APPENDIX 7

Montana University Units Compared to Peers in Selected States

1) Student and Faculty Profiles
2) Institutional Financial Profiles
3) Per Student FTE Cost Analysis
4) Tuition Profiles
5) Summary

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Legislative Fiscal Analyst
CLAYTON SCHENCK

January 28, 2000

To: Joint Subcommittee on Postsecondary Education Policy and Budget

From: Sandy Whitney, Senior Fiscal Analyst

Re: Montana University Units Compared to Peers in Selected States

The purpose of this report is to compare individual Montana campuses to their peers in selected other states in order to highlight the applicable public policy differences and similarities among them. Tables providing the comparison data are included as an appendix. The various types of comparisons are shown in Tables 1 through 4, and each set of tables for a particular comparison contains Tables A through D. The peer comparisons are based on: 1) student and faculty profiles (Tables 1, A-D); 2) institutional financial profiles (Tables 2, A-D); 3) a per student FTE cost analysis (Tables 3, A-D); and 4) tuition profiles (Tables 4, A-D). The tables in each type of comparison are arranged so that: 1) the two largest campuses in Montana are compared to their peers in the "A" tables; 2) the schools of mines are compared in the "B" tables; 3) the mid-sized campuses are compared in the "C" tables; and 4) the smallest schools are compared in the "D" tables.

To the extent possible, the data is comparable between Montana and the peer units in each category. Medical schools, research and public service agencies, and community colleges are excluded. Only expenditures from current unrestricted operating funds for the general operations of the units and the co-located colleges of technology are included. Student FTE are either recorded at 15 credit hours per undergraduate FTE per semester or adjusted to 15 credit hours based on information from the responding states. Generally, state funds include the general fund and other state funds, such as millage in Montana. The New Mexico data has been adjusted so that its state funds include general fund less estimates for deferred maintenance and plant equipment, which are not included in Montana's current unrestricted operations.

However, there are cases in which the data is not comparable. In those cases, the discrepancies have been footnoted in the tables and adjusted to an estimate comparable to Montana when practical. For example, Montana includes its summer session students and faculty in the current unrestricted operating fund, but North Dakota and Washington do not. No adjustments were made in these cases because all factors were excluded and did not unbalance student/faculty ratios or per student costs. However, Idaho and Oregon excluded the summer session faculty from their faculty FTE data, but included summer school costs and student FTE. In these cases, the faculty numbers were adjusted upward based on the percentage of summer school credit hours compared to total annual credit hours recorded.

Non-resident tuition is the other major area where data are not strictly comparable. In North Dakota and South Dakota, published nonresident tuition is greater than the Western Undergraduate Exchange (WUE) program tuition, which is generally 150 percent of the resident tuition. Because the majority of their nonresident students are WUE or Minnesota exchange students, the nonresident tuition shown for those states is the WUE rate.

STUDENT AND FACULTY PROFILES

Tables 1, A-D, show: 1) the resident and nonresident enrollment and the percentage of nonresidents in the first part of the tables; and 2) the faculty in each university, the average faculty salaries, and the student faculty ratios.

Resident and Nonresident Enrollment

The tables indicate that, generally, the percentage of nonresidents varies with the size or specialty of the campus. Nonresident enrollment generally ranges from 20 to 30 percent in the larger universities and the schools of mines, from 18 to 19 percent in the mid-sized schools, and from 12 to 17 percent in the smallest schools.

The exceptions to the enrollment/size correlation appear to be at least partially explained by location and the difference between resident and nonresident tuition in the peer schools. For example, Table 1C shows that MSU-Billings and Eastern Washington University both have a very small non-resident enrollment. Both schools have large local enrollment and are somewhat isolated from other similar schools, either inside or outside of their own states. As indicated in the public policy discussion in the "Tuition Profiles" section of this report, both also charge moderate resident tuition and fairly high nonresident tuition, resulting in a disincentive to nonresidents to travel great distances and pay higher rates. That section shows that one of the main factors in nonresident enrollment can be tuition policy.

Faculty and Student Faculty Ratios

This section notes the differences among the total salaries and benefits packages (generally abbreviated to "salaries" in the text) offered at the peer universities. Those paragraphs are followed by a discussion of student faculty ratios.

Faculty Salaries and Benefits

Average faculty salaries and benefits can vary among universities depending on faculty longevity, numbers of tenured faculty compared to total faculty, teaching discipline, and the differences in salaries offered for faculty of similar longevity and status. This report makes no attempt to analyze the causes of differences among the peer universities. It merely notes the

differences in each of the four groups of peer universities and Montana's comparative ranking and possible competitiveness.

Average faculty salaries and benefits tend to be higher in the larger universities in the peer comparisons. However, the $10,000 variation between the lowest salary package of $57,600 at the University of North Dakota and $67,600 at the University of Idaho, as shown in Table 1A, is smaller than the variation in any of the other size categories. Except for the University of Idaho, both UM-Missoula and MSU-Bozeman salaries are higher than those in their peer universities. Since Montana's doctoral university salaries are above the median and within the $10,000 range, they might be considered competitive with their peers in the selected comparison states.

The competitive nature of Montana's university salaries is less clear at the schools of mines and the two smaller groups of university campuses, as shown in Tables 1, B-D. While Montana salaries are at or above the median in all cases, the ranges of salaries paid are broader. At the schools of mines, the highest salary and benefits package is approximately $12,000 higher than the lowest. Among the MSU-Billings peers, the range is approximately $14,500, and among Western Montana College-UM and MSU-Northern peers, the range is over $15,000. The broadness of the ranges suggests that factors other than competition for faculty may be playing a larger role in these units than in the Table 1A universities.

The salary comparisons between Montana and New Mexico, the only states with representative schools in all four categories, are also interesting. Of the six Montana schools, four pay higher salaries than their peers in New Mexico. Only the New Mexico Institute of Mining, Table 1B, and Western New Mexico University, Table 1D, faculty salaries are higher than those in Montana. The New Mexico Institute of Mining salaries are nearly $6,700 higher than those at MT Tech-UM. The Western New Mexico University faculty salaries are $2,000 higher than those at Western Montana College-UM. All other factors aside, the salary and benefits packages might be considered competitive among the peers in these two states.

Student Faculty Ratios

Student/faculty ratios appear to rise slightly as enrollment decreases, then decline in the smallest schools. As shown in Table 1A, four of the six comparison schools have student/faculty ratios exceeding 19. Three of the six comparison schools in Table 1C have ratios exceeding 22. Table 1D shows that six of the seven comparison schools have student/faculty ratios that are less than 19. It appears that mid-sized liberal arts schools, such as those shown in Table 1C, can achieve some efficiencies not available in larger schools with a more varied curriculum or smaller schools with limited enrollment.

However, Montana student/faculty ratios are among the highest in the comparison states. As can be seen in Tables 1A and 1B, only Northern Arizona University and the South Dakota School of Mines have student/faculty ratios higher than the Montana peers. MSU-Billings is at the median in Table 1C. MSU-Northern has a ratio higher than all but Lewis and Clark State University in Idaho. Among the Montana campuses, only the Western Montana College-UM ratio is below the median among its peers. Not surprisingly, in the majority of the comparisons, the higher

student/faculty ratios generally coincide with lower per student expenditures, as discussed in the "Per Student FTE Cost Analysis" section below.

INSTITUTIONAL FINANCIAL PROFILES

The institutional financial profiles showing total current unrestricted and total instruction program funds for the peer units in selected states are shown in Tables 2 A-D. These tables illustrate the state policies regarding: 1) the use of state funds compared to total current unrestricted funds; 2) the use of state funds compared to tuition in instruction; and 3) the emphasis on instruction compared to all current unrestricted fund operations.

Current unrestricted funds are funds used for the general operations of a university. Those funds, generally derived from state general fund, student tuition, and miscellaneous funds, are used to fund: 1) instruction; 2) research, excluding federal grants; 3) public service; 4) academic support, such as library services; 5) student services; 6) institutional support, which is administration; 7) operation and maintenance of plant, excluding major capital expenditures; and 8) scholarships and fellowships, which are generally fee waivers.

While the schools in the comparison states basically use this program structure, there are differences in accounting, particularly in New Mexico and Idaho. To the extent possible, adjustments to the data have resulted in reported financial profiles comparable to those in Montana. For example, the federal research grants and the indirect costs allowed on those grants, as well as the lottery scholarship funding recorded as a double appropriation, have been removed from New Mexico's current unrestricted fund to provide data comparable to Montana. In addition, New Mexico appropriates general fund for plant capital and equipment programs and requires that the money be transferred to the off-budget plant funds. These funds have also been removed from the current unrestricted funds on a prorated basis to provide comparability with Montana, since Montana funds such expenditures through the long-range cash and bonding bills.

In spite of the above adjustments, New Mexico current unrestricted funding is probably still slightly misstated relative to Montana because two offsetting accounting procedures could not be adjusted. First, interest earnings on tuition, which were reported as part of miscellaneous revenue in New Mexico, were removed in the above adjustments. These amounts could not be extracted and included with the current unrestricted fund as is done in Montana, resulting in an understatement of New Mexico funding relative to Montana. Second, some of New Mexico's campuses record internal service revenue and expenditures in the current unrestricted fund, and some, like Montana, do not. No records are kept the determine the resulting amount of double counting that would thus overstate New Mexico's funding relative to Montana.

Idaho charges all students a matriculation fee, and it charges tuition to nonresidents, only. Both matriculation fees and nonresident tuition are used in the current unrestricted operating fund. Therefore, the tuition/other funds column in Tables 2, A-D includes all the funds as comparable to Montana tuition. However, Idaho officials stated that, because of their legal requirements regarding the matriculation fee, the university programs were not necessarily funded proportionately from state funds, the matriculation fee, and tuition. Therefore, the state and

tuition parts of the instruction funding in Idaho are shown in the tables only with the words, "lump sum."

State Funds Compared to Total Current Unrestricted Funds

As shown in Tables 2, A-D, state policies regarding state support for the university systems vary widely across, as well as within, peer groups. For example, as shown in the tables, state support for universities varies from less than 50 percent at UM-Missoula and MSU-Bozeman, as shown in Table 2A, to nearly 90 percent at New Mexico Institute of Mining, as shown in Table 2 B. Generally, these variations represent an overall state commitment to higher education from approximately half the budget in Montana to two-thirds to three-fourths of the budget in selected comparison states (see "Montana University System Compared to Systems in Selected States," January 28, 2000).

The data also show that the public policy is to commit state funds at a lower rate to larger schools, where there are more nonresident students and higher tuition revenues, than to the smaller schools with less ability to generate tuition income. This public policy is particularly evident in Montana. Less than 50 percent of the budget is composed of state funds at the two largest universities, but the state support is approximately 60 percent at MT Tech-UM, MSU-Billings, MSU-Northern, and Western Montana College-UM. The trend can be seen in Tables 2, A-D to a lesser extent in New Mexico, North Dakota, and South Dakota. In addition, Oregon provides state funds equal to 47 percent of its overall system spending (see "Montana University System Compared to Systems in Selected States," January 28, 2000), but provides 57 percent of the budget at Southern Oregon and the Oregon Institute of Technology. Not enough data is available from Arizona, Idaho, and Washington to determine if the policy is similar in those states.

State Funds Compared to Tuition in Instruction

The instruction programs in the various schools are not necessarily funded with pooled state funds and tuition as they are in Montana. Two other policies are also demonstrated in Tables 2, A-D. The policy in Arizona is to earmark all tuition for instructional costs and to supplement the program with state funds, as shown for Northern Arizona University in Table 2A. The same policy is in effect in North and South Dakota, as shown in the tables. Conversely, the policy in New Mexico is to fund instruction with nearly all state funds, leaving most of the tuition and other funds for use in other programs.

It is not clear what public policy is being implemented in the above states. However, such an earmarking could be used to implement certain public policies in Montana, even though the state has no control over tuition. For example, the state requested that the university system increase its spending on the campus maintenance and operation program to 13.0 percent of the total system current unrestricted funds in the 2001 biennium from 11.0 percent in fiscal 1998. This request was an effort to begin limiting the increases in deferred maintenance. For fiscal 2000, the maintenance and operation program budget as a percentage of total current unrestricted funds

is 11.3 percent. If the legislature wished to implement the policy of increased maintenance, it could restrict earmarked state funds as a separate line-itemed lump sum for the entire maintenance and operation budget on all the campuses.

Instruction Compared to All Current Unrestricted Fund Operations

Policies emphasizing instruction are very similar in all the peer universities, as shown in the last column of Tables 2, A-D. Emphasis on instruction, as measured by percent of total current unrestricted funds, generally varies from 47 to 57 percent across most campuses of all sizes. The New Mexico campuses shown in Tables 2B and 2C do spend less than 47 percent of total funds on instruction. However, their percentage expenditures from larger per student budgets actually result in more dollars for instruction as discussed in the "Montana University System Compared to Systems in Selected States" report, dated January 28, 2000.

The Board of Regents' emphasis on instruction, as measured by percentage of total budget at the various campuses, is greater than that of the peers among the major campuses and the schools of mines and at approximately the median level among the smaller campuses. For example, instruction at UM-Missoula and MSU-Bozeman is approximately 55 percent of the total budget, while instruction at the University of Idaho is 48 percent of total budget and instruction at the University of North Dakota is 50 percent of the total. However, the higher percentages in Montana are based on: 1) fewer total dollars and fewer instructional dollars per student (see next section); and 2) efforts to maintain competitive instructional salaries by maintaining generally higher student/faculty ratios, as discussed above. It does not appear that the students are receiving more instruction than their counterparts in the other states; based on student/faculty ratios and fewer instruction dollars per FTE, as discussed below, they may be receiving less instruction.

PER STUDENT FTE COST ANALYSIS

The cost analysis per student FTE shown in Tables 3, A-D, is presented in three parts: 1) the current unrestricted funding for all full time equivalent students in the left column and total instruction for all FTE in the right column; 2) an analysis showing the level to which the state supports resident FTE if all state funds were assumed to be earmarked for residents, as is the case in Montana; and 3) an analysis showing how much tuition would be needed from each resident and each nonresident if all state funds were earmarked for residents. The tuition need per student shown here is compared to the actual tuition charged in the "Tuition Profiles" section below.

Current Unrestricted and Instruction Funding for All FTE

As can be seen in the first and last columns of Tables 3, A-D, Montana's total funding and instructional funding per FTE are the lowest among all the comparison states and peer institutions, except for South Dakota. Montana is higher than peer schools in South Dakota in current unrestricted funding per FTE and in instructional funding per FTE except in the smallest schools shown in Table 3D. The instructional effort per student of approximately $3,200 per

FTE at MSU-Northern and Western Montana College-UM is lower than the $3,301 per FTE at Dakota State University. Except for Northern State University in South Dakota (Table 3C), MSU-Billings receives the least current unrestricted funding and the least instructional funding per FTE among all the schools surveyed, including the Montana universities.

If All State Funds Were Earmarked for Resident FTE

If all state funds were earmarked for resident FTE in all states, as they are in Montana, the state funds per FTE would be as shown in the second column of the tables. That column shows that the Regents' allocation of state funds per FTE in Montana varies from a low of $3,783 per resident at MSU-Billings in Table 3C to $5,021 per resident at MT Tech-UM in Table 3B. While the state pays more per student at some campuses than others, the Regents keep the resident tuition variation among campuses at less than $170 per student (Tables 4, A-D in the appendix). The policy issue thus raised in this analysis is: "Recognizing that university costs vary, should the state pay: 1) an equal percentage of total costs per FTE, leaving the students to pay the remaining percentage through tuition; 2) an equal amount per FTE, with the students paying widely differing tuition; or 3) unequal amounts per FTE so that the students pay roughly equal tuition?" Through the authority provided in lump sum funding, the Regents have chosen the latter policy, thus maintaining nearly equal financial access for all residents at all campuses.

As can be seen in all peer groups across the comparison states, there are schools where the state funds equivalent per FTE exceeds the total budget per FTE. For example, the University of Idaho, shown in Table 3A, spends $10,078 per resident FTE, compared to the total current unrestricted cost per FTE of $9,572. This indicates that state funds in Idaho might be used for non-current unrestricted costs, as defined in Montana's funding system, or nonresident subsidies.

Resident and Nonresident Tuition Need

Resident and nonresident tuition need, as used in Tables 3, A-D, is that amount of tuition needed to complete funding of the current unrestricted budget after the inclusion of the state funds. The tuition need for resident FTE is the difference between the total current unrestricted funds and the state funds, as shown in the third column of the tables. For example, the calculated resident tuition need at UM-Missoula, Table 3A, is $2,707.

As can be seen in the four tables, some states and schools show a negative resident tuition need. These data indicate that there would be more than enough state funds to support the residents, without resident tuition, if all nonresidents paid the full cost of education. For example, North Dakota general funds are $772 per FTE greater than needed for the full cost of current unrestricted funds for resident education. No resident tuition would be needed if North Dakota were using the same funding policies as those used in Montana.

Assuming all state funds are used to support resident FTE, the nonresident tuition need shown in column 4 is equal to the current unrestricted funds per FTE. At UM-Missoula, the nonresidents would be paying the full cost of their education if their tuition were $6,742. These nonresident

"tuition need" amounts, as well as the resident tuition need, are compared to actual tuition in the next section to highlight public policy differences among the states.

TUITION PROFILES

Tables 4, A-D show the resident tuition need calculated in the prior tables, the actual resident tuition, and the fiscal 1999 difference, which is the third column labeled "Tuition Subsidy (Overage)." A similar set of data for nonresident tuition is shown in the last three columns of the tables. A positive number in the third and sixth columns indicates that the calculated need for tuition is greater than the student is actually paying. Therefore, the students are somehow receiving a tuition subsidy. A negative number indicates that the students are paying more than the calculated need, and the overage is being used for some purpose other than direct support of the current unrestricted operating fund.

The following discussions highlight and compare the public tuition policies evident in the above data, both for Montana institutions and their peers in comparison states.

Montana Tuition Policies

The data in Tables 4, A-D demonstrate two public policies regarding tuition in Montana: 1) the amount of tuition is similar for most resident students in the Montana schools; and 2) tuition charged nonresidents is greater than the actual cost of education, resulting in a tuition excess that is used to subsidize resident tuition and provide fee waivers for both residents and nonresidents.

Similar Tuition for Resident Students

Basic tuition in the Montana university units is similar for most resident students, as indicated in the second column showing a tuition range of $167, from $2,039 at Western Montana College-UM to $2,206 at MT Tech-UM. All other units charge tuition at rates within that range. The Regents' policy, as indicated above, is to equalize resident tuition as much as possible.

However, costs do vary among the campuses and among programs on each campus (Tables 3, A-D). The Regents, through the lump sum spending authority, offset the higher cost of some schools with extra state funds or tuition generated by nonresidents (Tables 2 A-D). The result of this policy is that all resident students, regardless of ability to pay, have the same access to all programs, regardless of whether they are high or low cost (except primarily those very costly programs for which super tuition is charged, such as pharmacy or law).

Nonresident Tuition Greater Than Actual Cost

The Regents increased nonresident tuition so that, except for Western Montana College-UM, it exceeds the actual cost of current operations per student. As a result, excess nonresident tuition is available to subsidize resident students and pay for fee waivers.

For example, consider MSU-Bozeman in Table 4A. Actual fiscal 1999 resident tuition was $2,146, or $252 less than a full share of current unrestricted operating funds, after inclusion of the state share. That $252 subsidy for each resident FTE was primarily paid by nonresidents, who were charged tuition of $538 per FTE more than their calculated cost of education. Similarly, at MSU-Billings, residents pay $22 less than their full share, and nonresidents pay $868 more than the actual cost of education, thus subsidizing residents and fee waivers. These subsidies are the direct result of the Regents' policy to charge nonresidents for the full cost of education and more if the market would bear it. Western Montana College-UM is the only campus where the reverse occurs and residents pay $133 more than the full cost, while nonresidents pay $344 less.

One possible result of the Regents' policy to increase nonresident tuition is a decrease in nonresident enrollment. When UM-Missoula's nonresident enrollment did not meet projections in the fall of 1999, UM officials testified to the PEPB that it is unclear whether the nonresident tuition was a factor because it is comparable with other states in its region. A market analysis is being conducted to determine if Montana is currently charging all the tuition that the market will bear. However, it could be that competitiveness among states in nonresident tuition might be less a factor than the difference between a state's resident tuition and an adjoining state's nonresident tuition.

For example, a resident of Idaho would have to pay the difference between $7,106 nonresident tuition and a $1,120 resident matriculation fee, a $5,986 tuition premium, to attend UM-Missoula. A Montana resident would pay the difference between $2,126 at UM-Missoula and $7,120 at the University of Idaho, a premium of $4,994. Based on this tuition difference, it is not surprising that their nonresident enrollments have both declined.

However, consider a Montana resident weighing the benefits of attendance at MSU-Bozeman and the University of North Dakota. The Montana resident would pay a tuition premium of $1,398 to attend the North Dakota school, because North Dakota encourages nonresident enrollment by generally charging Western University Exchange tuition rates of $3,544 for nonresidents. In contrast, a North Dakota student would pay the difference between $7,575 nonresident tuition and $2,362 resident tuition, a premium of $5,213. Given the differences in tuition for students considering both schools, it is not surprising that MSU-Bozeman has a 26.7 percent nonresident enrollment, while the University of North Dakota has a 39.5 percent nonresident enrollment (Table 1A).

Other States Tuition Policies

Other states' policies, as discussed below, show tuition policy can be used to: 1) attract or discourage nonresident enrollment; 2) subsidize residents or nonresidents; 3) provide additional fee waivers; or 4) provide support for debt service, financial aid, or other programs.

Among the comparison units, only Eastern Washington University and the Oregon Institute of Technology charge their residents less tuition than needed to cover costs. Conversely, they both charge nonresidents more than needed to cover costs, thus paralleling the policies in Montana. In these two cases, the nonresident enrollment is 7.0 percent and 5.4 percent, respectively, which is the lowest nonresident enrollment among the comparison states, excluding Montana. As discussed above, it appears that a policy of high nonresident tuition does, at some point, tend to reduce nonresident enrollment.

Arizona, Idaho, New Mexico, North Dakota, and South Dakota all use more state and/or resident funds than needed per resident student, although policies appear to differ. Some campuses also charge less nonresident tuition than needed, while others charge more.

For example, Northern Arizona University would need to charge resident tuition of $406 if it were spending all state funds on residents, as shown in Table 4A. However, its resident tuition is $2,088, resulting in a resident tuition overcharge of $1,682. In addition, it would need to charge nonresidents $7,481 of tuition to provide for the cost of education, but it charges $8,004, for an overcharge of $523. Northern Arizona University could be using these extra funds in two ways: 1) fee waivers for both residents and nonresidents; or 2) other expenses not included in the current unrestricted fund. In fact, when questioned, Arizona officials noted that Northern Arizona University retained locally in fiscal 1999 $16.9 million of tuition revenue for debt service, financial aid, and other selected programs. Unlike Montana, Arizona policy allows use of student tuition for more than the current unrestricted operating expenses.

The University of Idaho has excess state funds of $505 and the resident matriculation fee of $1,120, for a total of $1,625 to use for other purposes. It used approximately half of the $12.6 million excess funds to directly subsidize nonresidents. The remaining portion was used for additional fee waivers for graduate assistants, athletics, reciprocity agreements, and presidential discovery scholarships. The general policy in Idaho is to use excess funds for waivers of tuition that would ordinarily be revenue to the current unrestricted fund. The policy difference between Idaho and Montana is in the number of fee waivers offered.

New Mexico's general tuition policy is similar to Idaho. For example, the tuition subsidy being paid by residents at New Mexico State University is $1,173, as shown in Table 4A. In addition, New Mexico provides lottery scholarships to its incoming resident freshmen. The amount was 100 percent of tuition in fiscal 1999, but as more students with those scholarships move through the system, the amount per student will decrease. The scholarship funds are not included in the current unrestricted data because students use those funds to pay tuition. However, to the extent that students do have these scholarships, resident fee waivers are reduced. This results in more funds from the tuition overcharge being available for nonresident fee waivers and other

expenses, such as internal service charges that are included in the total current unrestricted funds. The basic policy differences between New Mexico and Montana are the lottery scholarships and New Mexico's inclusion of certain items in the current unrestricted fund that are not included in Montana.

Both North Dakota and South Dakota charge more tuition than is needed, in combination with state funds, to fund the current unrestricted operating costs for all resident students. The University of North Dakota (Table 4A), the South Dakota School of Mines (Table 4B), and Mayville State University (Table 4D) also use a portion of state funds for purposes other than educating resident students. Given that these two states effectively charge WUE or other discounted tuition rates for most nonresident students, it appears that the state policy is to attract nonresidents through the use of state funds/resident student subsidized tuition. While these nonresidents do not pay the full cost of education, they do pay approximately half of the total tuition collected at most of the comparison schools, and the campuses collect $1.5 for every $1.0 invested in attracting those students. Montana decided to de-emphasize this policy in fiscal 1994 after it was shown that: 1) the actual cost of educating WUE nonresidents was approximately 2.4 times the amount of tuition being paid; and 2) the number of WUE students being admitted to Montana campuses was nearly four times the number of Montana residents going out of state on the WUE program.

SUMMARY

The PEPB may wish to discuss the policy issues reviewed in this report. A number of questions that could be discussed with members of the Board of Regents and the Office of the Commissioner of Higher Education are summarized as follows:

1) It appears that the faculty salaries at the two major campuses in the Montana University System are competitive with those in the comparison states. Salaries at the smaller units are not generally as high as those in the comparison states. Is Montana able to hire and retain qualified faculty at the lower rates?

2) How should the higher student faculty ratios on Montana campuses be interpreted, especially those at MSU-Billings?

3) State support for the university system at 50 percent of total current unrestricted funds for the system, 40 percent of total funds at the larger schools, and 60 percent of total funds at the smaller schools, is less that that in the comparison states. How do university officials and the legislature view this comparison?

4) Montana maintains its instructional budget at approximately 55 percent of total current unrestricted funds. In an effort to maintain faculty salaries, student/faculty ratios tend to be higher than in comparison states. If more funds were available, as there are in comparison states, would Montana's student faculty ratio decline, or would the policy be to use extra funds in other programs?

5) Montana's total funding and instructional funding per FTE are the lowest among all the comparison states and peer institutions, except for South Dakota. How do university officials and the legislature view this comparison?

6) Recognizing that university costs vary, should the state pay: 1) an equal percentage of total costs per FTE, leaving the students to pay the remaining percentage through tuition; 2) an equal amount per FTE, with the students paying widely differing tuition; or 3) unequal amounts per FTE so that the students may pay roughly equal tuition?" Through the authority provided in lump sum funding, the Regents have chosen the latter policy, thus maintaining nearly equal financial access for all residents at all campuses? Would the legislature prefer a different policy?

7) Montana nonresident tuition subsidizes resident students. These subsidies are the direct result of the Regents' policy to charge nonresidents for the full cost of education and more if the market would bear it. How do the university officials and the legislature view this policy, given the apparent decline in the numbers of nonresident students?

8) Unlike Montana, Arizona policy allows the use of student tuition for more than the current unrestricted operating expenses. Does the state wish to follow a similar policy for some expenses, such as earmarking state funds for maintenance and operation or some other purpose?

9) The general policy in Idaho is to use excess funds for waivers of tuition that would ordinarily be revenue to the current unrestricted fund. The policy difference between Idaho and Montana is in the number of fee waivers offered. Should Montana consider using higher resident and/or nonresident tuition to provide additional fee waivers or financial aid?

10) The New Mexico policy is to provide lottery scholarships to its incoming resident freshmen, which reduces the net tuition paid. Is this a policy that Montana should investigate?

11) Given that North Dakota and South Dakota effectively charge WUE or other discounted tuition rates for most nonresident students, it appears that the state policy is to attract nonresidents through the use of state funds resident student subsidized tuition. Is this a policy Montana should reconsider in order to attract more nonresidents, even if the return on the investment is $1.50 to $1.00 and if nonresidents do not pay the full cost of education?

Table 1A
Student & Faculty Profiles*
University of Montana-Missoula & Montana State University-Bozeman & Peers
Fiscal 1999

	Student Profiles				Faculty Profiles		
Institution	Resident FTE	Non-Res FTE	Total FTE	% Non-Resident	Annual FTE	Average Salary	Students/ Faculty
UM-Missoula	7,895	3,409	11,304	30 16%	581	60,163	19 46
MSU-Bozeman	7,601	2,774	10,375	26 74%	534	61,968	19 43
Northern Arizona U	14,600	2,884	17,484	16 50%	878	59,243	19 92
University of Idaho**	7,812	2,400	10,212	23 50%	582	67,600	17 56
N M. State U. LC	9,778	2,537	12,315	20 60%	644	58,300	19 12
U of North Dakota***	5,256	3,432	8,688	39 50%	533	57,600	16 30

*ND & WA student, faculty, and current unrestricted data do not include summer
**ID & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In ID all students pay matriculation fee - Non-residents pay tuition in addition
***ND reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE

Table 1B
Student & Faculty Profiles
Montana Tech of the University of Montana & Peers
Fiscal 1999

	Student Profiles				Faculty Profiles		
Institution	Resident FTE	Non-Res FTE	Total FTE	% Non-Resident	Annual FTE	Average Salary	Students/ Faculty
MT Tech - UM	1,710	266	1,976	13 46%	121	56,220	16 27
NM Institute of Mining	886	334	1 220	27 38%	112	62,900	10 89
SD School of Mines	1,319	597	1,916	31 16%	113	50,862	16 97

Table 1C
Student & Faculty Profiles*
Montana State University-Billings & Peers
Fiscal 1999

	Student Profiles				Faculty Profiles		
Institution	Resident FTE	Non-Res FTE	Total FTE	% Non-Resident	Annual FTE	Average Salary	Students/ Faculty
MSU - Billings	3,578	265	3,843	6 90%	201	53,659	19 13
Eastern NM University	2,306	551	2,857	19 29%	153	48,200	18 73
Minot State University**	2,282	491	2,773	17 70%	169	53,400	16 41
Southern Oregon U ***	3,610	780	4,390	17 77%	197	56,700	22 28
Northern State U - SD	1,868	419	2,287	18 32%	102	48,733	22 34
Eastern Washington U	6,704	505	7,209	7 01%	324	62,667	22 25

*ND & WA student, faculty, and current unrestricted data do not include summer
**ND reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE
***ID & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %

Table 1D
Student & Faculty Profiles*
MSU-Northern & Western Montana College of the U of M & Peers
Fiscal 1999

	Student Profiles				Faculty Profiles		
Institution	Resident FTE	Non-Res FTE	Total FTE	% Non-Resident	Annual FTE	Average Salary	Students/ Faculty
MSU - Northern	1,411	90	1,501	6 00%	81	51,534	18 54
UM - Western	843	127	970	13 09%	59	46,802	16.54
Lewis & Clark State U.-ID**	2,106	360	2,466	14 60%	118	53,150	20.87
Western New Mexico U.	1,406	282	1,688	16 71%	121	48,800	13.95
Mayville State U - ND***	495	192	687	28 00%	48	46,800	14.31
Oregon Institute of Tech **	1,933	111	2,044	5 43%	121	61,860	16.84
Dakota State U - SD	1,014	137	1,151	11 90%	63	47,800	18 41

*ND & WA student, faculty, and current unrestricted data do not include summer
**ID & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In ID all students pay matriculation fee - Non-residents pay tuition in addition
***ND reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE

Table 2A
Institution Financial Profiles*
University of Montana-Missoula & Montana State University-Bozeman & Peers
Fiscal 1999

Institution	State Funds	Tuition/ Other Funds	Total Current Unrestricted	Percent State Funds	State Funds Instruction	Tuition/Other Instruction	Total Funds Instruction	Percent State Funds	Instr % Cur Unres
	----------Current Unrestricted Funds----------				----------Instruction Funds----------				
UM-Missoula	$ 31,852,311	$ 44,356,429	$ 76,208,740	41 80%	$ 17,737 345	$ 24,700 415	$ 42 437,760	[illegible]	55 69%
MSU-Bozeman	35,254,876	37,749,179	73,004,055	48 29%	19 434 891	20,809,920	40,244,811	48 29%	55 13%
Northern Arizona U	103,300,000	27,500,000	130,800,000	78 98%	40,900 000	27,500 000	68,400,000	59 80%	52.29%
University of Idaho**	78,726,000	19,027,900	97,753,900	80 53%	lumo-sum	lump-sum	47,421,095	NA	48 51%
N M. State U LC***	89,360,074	28,843,965	118,204,039	75 60%	60 440,700	2,012,100	62,452,800	96 78%	52 83%
U of North Dakota****	47,392,411	24,237,308	71 629,719	66 16%	11 809 007	24,237,308	36,046,315	32 76%	50 32%

*NO & WA student faculty and current unrestricted data do not include summer
**IO & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In ID all students pay matriculation fee - Non-residents pay tuition in addition-state funds include endowments
***NM state funds exclude state appropriations for deferred maintenance and special equipment (prorated by general fund portion)
****ND reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits FTE

Table 2B
Institution Financial Profiles
Montana Tech of the University of Montana
Fiscal 1999

Institution	State Funds	Tuition/ Other Funds	Total Current Unrestricted	Percent State Funds	State Funds Instruction	Tuition/Other Instruction	Total Funds Instruction	Percent State Funds	Instr % Cur Unres
MT Tech - UM	$ 8,585,255	$ 5,343,190	$ 13,928,445	61 64%	$ 4,949,659	$ 3,080,511	$ 8,030,170	61 64%	57 65%
NM Institute of Mining*	21,163,132	2,999,100	24 162,232	87 59%	9,392,700	821,400	10,214,100	91 96%	42 27%
SD School of Mines	9,300,000	2,900,000	12,200,000	76 23%	4,000,000	2,900,000	6,900,000	57 97%	56 56%

Table 2C
Institution Financial Profiles*
Montana State University-Billings
Fiscal 1999

Institution	State Funds	Tuition/ Other Funds	Total Current Unrestricted	Percent State Funds	State Funds Instruction	Tuition/Other Instruction	Total Funds Instruction	Percent State Funds	Instr % Cur Unres
MSU - Billings	$ 13,535,340	$ 9 129 505	$ 22 664 845	59 72%	$ 7 211 359	$ 4 864 018	$ 12,075,377	59 72%	53 28%
Eastern NM University**	22,020,375	5,226 974	27 247,349	80 82%	11,234,500	1,525,500	12,760,000	88 04%	46 83%
Minot State University***	11 759 203	5 549 132	17 308,335	67 94%	4 115,137	5 549 132	9 664,269	42 58%	55 84%
Southern Oregon U ****	18,006,369	13 363 611	31 369 980	57 40%	9 537 567	7 078 404	16,615,971	57 40%	52 97%
Northern State U - SD	7,500,000	3,300,000	10,800,000	69 44%	2 900 000	3 300,000	6,200,000	46 77%	57 41%
Eastern Washington U	39 564 000	19 355 000	58 919 000	67 15%	19 543 000	9 562,000	29,105,000	67 15%	49 40%

*ND & WA student faculty and current unrestricted data do not include summer

Table 2D
Institution Financial Profiles*
MSU-Northern & Western Montana College of the U of M
Fiscal 1999

Institution	State Funds	Tuition/ Other Funds	Total Current Unrestricted	Percent State Funds	State Funds Instruction	Tuition/Other Instruction	Total Funds Instruction	Percent State Funds	Instr. % Cur Unres.
MSU - Northern	$ 6 167,115	$ 3,667,307	$ 9,834,422	62 71%	$ 3,007,942	$ 1,788,688	$ 4,796,630	62.71%	48 77%
UM - Western	4 221,320	2,484 551	6,705,871	62 95%	2,005,128	1,180,162	3,185,290	62 95%	47.50%
Lewis & Clark State U -ID**	14,374 151	3,284 400	17,658,751	81 40%	lump-sum	lump-sum	9,103,661	NA	51 55%
Western New Mexico U ****	12,227,582	2,953,588	15,181,170	80 54%	6,319,700	1,623,300	7,943,000	79 56%	52.32%
Mayville State U - ND***	3,720,453	1,370,902	5,091,355	73 07%	1,028,960	1,370,902	2,399,862	42 88%	47.14%
Oregon Institute of Tech **	11,494,060	8,530,434	20,024,494	57 40%	5,867,675	4,354,755	10,222,430	57 40%	51.05%
Dakota State U - SD	5 400 000	1,500,000	6 900 000	78 26%	2,300,000	1,500,000	3,800,000	60.53%	55.07%

Table 3A
Per Student FTE Cost Analysis*
University of Montana-Missoula & Montana State University-Bozeman
Fiscal 1999

Institution	Cur Unres Cost/Tot FTE	-----If State Funds Applied to Residents Only----- State Funds per Res FTE	Tuition Need/ Resident FTE	Tuition Need/ Non-Res FTE	Instruction Per Tot FTE
UM-Missoula	$ 6,742	$ 4,034	$ 2,707	$ 6,742	$ 3,754
MSU-Bozeman	7,037	4,638	2,398	7,037	3,879
Northern Arizona U.	7,481	7,075	406	7,481	3,912
University of Idaho**	9,572	10,078	(505)	9,572	4,644
N M State U. LC	9,598	9,139	459	9,598	5,071
U of North Dakota***	8,245	9,016	(772)	8,245	4,149

*ND & WA student, faculty, and current unrestricted data do not include summer
**ID & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In ID all students pay matriculation fee - Non-residents pay tuition in addition
***ND reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE

Table 3B
Per Student FTE Cost Analysis
Montana Tech of the University of Montana
Fiscal 1999

Institution	Cur Unres Cost/Tot FTE	-----If State Funds Applied to Residents Only----- State Funds per Res FTE	Tuition Need/ Resident FTE	Tuition Need/ Non-Res FTE	Instruction Per Tot FTE
MT Tech - UM	$ 7,049	$ 5,021	$ 2,028	$ 7,049	$ 4,064
NM Institute of Mining	19,805	23 886	(4,081)	19,805	8,372
SD School of Mines	6,367	7 051	(683)	6,367	3,601

Table 3C
Per Student FTE Cost Analysis*
Montana State University-Billings
Fiscal 1999

Institution	Cur Unres Cost/Tot FTE	-----If State Funds Applied to Residents Only---- State Funds per Res FTE	Tuition Need/ Resident FTE	Tuition Need/ Non-Res FTE	Instruction Per Tot FTE
MSU - Billings	$ 5,898	$ 3 783	$ 2,115	$ 5,898	$ 3,142
Eastern NM University	9,537	9 549	(12)	9,537	4 466
Minot State University**	6,241	5,152	1,089	6,241	3,485
Southern Oregon U ***	7,146	4 988	2,158	7,146	3,785
Northern State U - SD	4 722	4 015	707	4 722	2,711
Eastern Washington U	8 173	5 902	2,271	8,173	4,037

*ND & WA student, faculty, and current unrestricted data do not include summer
**ND reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE
***ID & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In ID all students pay matriculation fee - Non-residents pay tuition in addition

Table 3D
Per Student FTE Cost Analysis*
MSU-Northern & Western Montana College of the U of M
Fiscal 1999

Institution	Cur Unres Cost/Tot FTE	-----If State Funds Applied to Residents Only----- State Funds per Res FTE	Tuition Need/ Resident FTE	Tuition Need/ Non-Res FTE	Instruction Per Tot FTE
MSU - Northern	$ 6,552	$ 4,371	$ 2,181	$ 6,552	$ 3,196
UM - Western	6,913	5,007	1,906	6,913	3,284
Lewis & Clark State U -ID**	7,161	6,825	336	7,160	3,692
Western New Mexico U	8,994	8,697	297	8,994	4,706
Mayville State U - ND***	7,412	7,522	(111)	7,412	3,494
Oregon Institute of Tech **	9,797	5,946	3,850	9,797	5,001
Dakota State U - SD	5,995	5,325	669	5,995	3,301

*ND & WA student, faculty, and current unrestricted data do not include summer
**ID & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In ID all students pay matriculation fee - Non-residents pay tuition in addition
***ND reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE

Table 4A
Tuition Profiles*
University of Montana-Missoula & Montana State University-Bozeman & Peers
Fiscal 1999

Institution	Resident FTE: Tuition Need/ Resident FTE	Resident FTE: Actual Tuition	Resident FTE: Tuition Subsidy (Overage)	Non-resident FTE: Tuition Need/ Non-Res FTE	Non-resident FTE: Actual Non-Res Tuition	Non-resident FTE: Tuition Subsidy (Overage)
UM-Missoula	$ 2,707	$ 2,126	$ 581	$ 6,742	$ 7,106	$ (364)
MSU-Bozeman	2,398	2,146	252	7,037	7,575	(538)
Northern Arizona U	406	2,088	(1,682)	7,481	8,004	(523)
University of Idaho**	(505)	1,120	(1,625)	9,572	7,120	2,452
N M State U LC	459	1,632	(1,173)	9,598	6,939	2,659
U of North Dakota***	(772)	2,362	(3,134)	8,245	3,544	4,701

*NO & WA student, faculty, and current unrestricted data do not include summer
**IO & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In ID all students pay matriculation fee - Non-residents pay tuition in addition
***NO reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE - Non-resident tuition is WUE rate

Table 4B
Tuition Profiles
Montana Tech of the University of Montana & Peers
Fiscal 1999

Institution	Resident FTE: Tuition Need Resident FTE	Resident FTE: Actual Tuition	Resident FTE: Tuition Subsidy (Overage)	Non-resident FTE: Tuition Need/ Non-Res FTE	Non-resident FTE: Actual Non-Res Tuition	Non-resident FTE: Tuition Subsidy (Overage)
MT Tech - UM	$ 2,028	$ 2,206	$ (178)	$ 7,049	$ 7,476	$ (427)
NM Institute of Mining	(4,081)	1,524	(5,605)	19,805	6,286	13,519
SD School of Mines*	(683)	1,685	(2,368)	6,367	2,527	3,840

*Non-resident tuition is WUE rate

Table 4C
Tuition Profiles*
Montana State University-Billings & Peers
Fiscal 1999

Institution	Resident FTE: Tuition Need/ Resident FTE	Resident FTE: Actual Tuition	Resident FTE: Tuition Subsidy (Overage)	Non-resident FTE: Tuition Need/ Non-Res FTE	Non-resident FTE: Actual Non-Res Tuition	Non-resident FTE: Tuition Subsidy (Overage)
MSU - Billings	$ 2,115	$ 2,093	$ 22	$ 5,898	$ 6,766	$ (868)
Eastern NM University	(12)	1,206	(1,218)	9,537	5,965	3,572
Minot State University**	1,089	1,552	(463)	6,241	2,450	3,791
Southern Oregon U ***	2,158	2,520	(362)	7,146	8,724	(1,578)
Northern State U - SD**	707	1,685	(977)	4,722	2,527	2,195
Eastern Washington U	2,271	2,205	66	8,173	8,632	(459)

*ND & WA student, faculty, and current unrestricted data do not include summer
**NO reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE - ND & SD non-resident tuition is WUE rate
***IO & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In ID all students pay matriculation fee - Non-residents pay tuition in addition

Table 4D
Tuition Profiles*
MSU-Northern & Western Montana College of the U of M & Peers
Fiscal 1999

Institution	Resident FTE: Tuition Need/ Resident FTE	Resident FTE: Actual Tuition	Resident FTE: Tuition Subsidy (Overage)	Non-resident FTE: Tuition Need/ Non-Res FTE	Non-resident FTE: Actual Non-Res Tuition	Non-resident FTE: Tuition Subsidy (Overage)
MSU - Northern	$ 2,181	$ 2,048	$ 133	$ 6,552	$ 6,920	$ (368)
UM - Western	1,906	2,039	(133)	6,913	6,569	344
Lewis & Clark State U -ID**	336	1,069	(733)	7,160	6,341	819
Western New Mexico U	297	1,103	(806)	8,994	5,408	3,585
Mayville State U - ND***	(111)	1,832	(1,943)	7,412	2,290	5,122
Oregon Institute of Tech **	3,850	2,592	1,258	9,797	10,119	(322)
Dakota State U - SD***	669	1,685	(1,015)	5,995	2,527	3,468

*NO & WA student, faculty, and current unrestricted data do not include summer
**IO & OR faculty FTE = AY reported FTE-adjusted for summer school based on student credit hours %
In IO all students pay matriculation fee-NR pay tuition in addition-NR waivers to graduate assistants, athletics, reciprocity, presidential discovery
***ND reports student FTE=16 credits/FTE - all ND student data are adjusted to 15 credits/FTE - ND & SD non-resident tuition is WUE rate

APPENDIX 8

Governance, Budget, & Appropriations Comparisons: Montana vs. Surveyed States

1) State/University System Relationships
2) Comparison of Financing Objectives by Budget Method
3) Distribution of Appropriated Funds
4) Conclusions and Recommendations

MONTANA LEGISLATIVE BRANCH

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Legislative Fiscal Analyst
CLAYTON SCHENCK

January 28, 2000

To: Joint Subcommittee on Postsecondary Education Policy and Budget

From: Sandy Whitney, Senior Fiscal Analyst

Re: Governance, Budget, and Appropriation Comparisons: Montana vs Surveyed States

The purpose of this report is to: 1) compare the Montana state/university system governing and control relationships with those in other western states; 2) compare budgeting methods in Montana to those in other states; 3) show how those methods meet the various financing objectives for higher education; 4) illustrate the various methods used in Montana and other states to distribute the budgeted funds to the campuses; and 5) draw conclusions relative to the effectiveness of lump sum funding in terms of the public policy promoted and achieved.

States surveyed and compared to Montana are those having universities that are peer units of the various campuses in Montana, as determined by the University Funding Study Committee in its January 1989 "Report to the Fifty-First Legislature." The comparison states are Arizona, Idaho, New Mexico, North Dakota, Oregon, South Dakota, and Washington. The data presented in this report are drawn from:

1) legislative and/or central coordinating agency staff responses to a Legislative Fiscal Division survey that included questions on governance, budgeting, and appropriations;
2) state constitutional provisions governing higher education;
3) state statutory provisions; and
4) the Curry and Fischer report on state/university relationships, the objectives of higher education financing, and higher education budget methods as presented on October 20, 1999 to the Joint Subcommittee on Postsecondary Education Policy and Budget (PEPB) entitled "Models of State/University System Management" ("Models").

STATE/UNIVERSITY SYSTEM RELATIONSHIPS

A review of the constitutional and statutory provisions regulating the university systems in Montana and the other states indicates that the constitutional control is vested in the Board of Regents and the Board of Higher Education in Montana and North Dakota, respectively. Given the control vested in the respective boards, rather than in the legislature, these states have state-aided systems as defined in "Models" and shown in Table 1. The North Dakota legislature generally appropriates most funds as a lump to each campus. However, it appropriates pooled funds, such as for salary increases, to the Board of Higher Education for distribution to the

campuses. As a result, the legislature maintains control of the funding for each campus, while allowing the Board management control of salaries.

Montana provides the most university system flexibility through the financing option that appropriates university system lump sum funding, including funding for salary increases, to the Board of Regents. With the advent of that legislatively approved system, the Montana Board of Regents controls all funding options for both the Commissioner of Higher Education and all campuses.

Table 1
University System Governing and Control Characteristics

	Montana	Arizona	Idaho	New Mexico
Legal Control	Constitutional	Statutory	Statutory	Statutory
Budgeting	Incremtl/Formula/System	Incremental/Unit	Incremental/System	Incremtl/Formula/System
Expenditure Oversight	Regents	Regents*	Board of Education*	Regents/Unit*
Accountability	Post Audit	Post Audit	Reporting	Reporting
Tuition & Pricing Policy	Regents	Regents	State/Board	Regents/Unit
Financing Options	State/Regents	State/Regents	State	State/Regents
Salary Administration	Regents	Regents	State	Regents/Unit
Enrollment Policy	Regents	Regents	Board of Education	Regents/Unit
Program Review	Regents	Regents	Board of Education	Regents/Unit
General Relationship**	State-Aided	State-Aided	State Controlled	State-Aided

	N. Dakota	Oregon	S. Dakota	Washington
Legal Control	Constitutional	Statutory	Statutory	Statutory
Budgeting	Incremtl./Unit/System	Incremental/System	Incremtl./Incentive/Unit	Incremtl/Formula/Unit
Expenditure Oversight	Board of Higher Ed	Board of Higher Ed.*	Regents*	Regents*
Accountability	Rept'ing/Performance	Rept'ing/Performance	Rept'ing/Post Audit	Reporting/Coord. Board
Tuition & Pricing Policy	Board of Higher Ed.	Board of Higher Ed.	Regents	State-in Statute
Financing Options	State/Board	State	State	State
Salary Administration	Board of Higher Ed	State/Board	Regents	State
Enrollment Policy	Board of Higher Ed.	Board of Higher Ed.	Regents	State/Regents
Program Review	Board of Higher Ed.	Board of Higher Ed.	Regents	Regents/Faculty/ Coordinating Board
General Relationship	State-Aided	State Controlled	State Controlled	State Controlled

*Powers assigned by law
**Relationship designated by each state on the survey

The university systems in all other surveyed states are primarily governed by statute and may be either state-aided or state-controlled (see "Models"), as determined by the legislature. Table 1 shows that state legislatures in Arizona and New Mexico have chosen to provide institutional flexibility through state-aided model of governance that is approximately equal to flexibility provided the systems under constitutional control. In these two states, expenditure oversight, tuition policy, salary administration, enrollment policy, and program review are, by statute, all under the control of the boards of regents.

Idaho, Oregon, South Dakota, and Washington, by their own designations, have state-controlled systems. Statutes authorize the boards to act with a great deal of authority, especially in expenditure oversight, enrollment policy, and program review. However, they vary in the

authorized control over tuition policy, financing options, and salary administration. The Washington university system is the most strongly state-controlled of this group because the state legislature specifies tuition in statute, maintains control of the financing options and salary administration, and shares enrollment policy decisions with the regents.

BUDGETING METHODS IN SELECTED WESTERN STATES

As discussed in "Models," budgets are constructed primarily by the incremental method, by formula, or on the basis of performance. The states surveyed use these methods in various combinations to determine their higher education budgets, along with incentive or targeted funding and restricted line items. Table 2 shows: 1) the budgeting methods used by the surveyed states, compared to Montana's method; 2) the factors that are used to construct the budget, regardless of method; and 3) the primary bases to which the factors are applied.

Primary budgeting methods for the comparison states are incremental in nature, with formulas, performance budgets, and line items used in selected cases. As the table shows, all comparison states use the incremental budgeting method, which means they begin with a base year expenditure level and add funds incrementally for projected increases in costs, such as for inflation, increases in workload (enrollment increases, generally), or maintenance. Oregon is the only comparison state that does not use an enrollment factor directly. The other states use actual enrollment, projected enrollment, or some combination of the two to determine budgets. For example, Montana

Table 2
Comparison of Budgeting Methods

	MT	AZ	ID	NM	ND	OR	SD	WA
Budgeting Method								
Incremental	X	X	X	X	X	X	X	X
Formula	X			X				
Performance			X			X	X	
Incentive/Targeted	X		X		X	X	X	X
Factors in Determining Budget:								
Base Expenditures	X	X	X	X	X	X	X	X
Incremental Costs	X	X	X	X	X	X	X	X
Enrollment- Actual	X	X	X	X	X		X	X
FTE	X	X	X	X	X		X	X
Head Count				X				
Enrollment- Projected	X	X	X		X			
FTE	X	X	X		X			
Head Count								
Program Costs								
Instruction	X	X		X				
Academic Support				X				
Student Services	X			X				
Other				X				
Student Faculty Ratio				X				
System Budget Base:								
Entire System			X		X	X		
Individual Units		X			X		X	X
Programs	X		X					
Formula				X				

assumes that actual enrollment is served by base year expenditures. It then adjusts the new budgets for increases from the actual enrollment in the base year to the projected enrollment in the new biennium. The projected increases are further refined by adjustments to represent costs for the new enrollment based on the cost of instruction and student services.

New Mexico goes even further by applying a base formula that considers: 1) head count, which is the actual number of students enrolled, as a factor in programs such as student services; 2) FTE as a factor in other programs such as instruction; 3) formula driven budgeting that takes into account the costs of the various programs offered in the system; and 4) the student/faculty ratio. For example, New Mexico calculates the university system budgets so that they include more funds for programs in science or engineering than for liberal arts programs. Factors include the cost of space maintenance, materials, and the differing student/faculty ratios required in each discipline.

Performance based budgets, incentive budgeting, targeted spending, and line items are types of budgeting used to accomplish state or university system goals. The following section outlines some of the ways the comparison states use this type of funding. Unless otherwise indicated, the same or similar budgets could be used in Montana, in coordination with the lump sum funding. For example, the Montana system is attempting to define some performance standards that could be used to help monitor the quality of the system, as discussed at the November PEPB meeting by Dr. Joyce Scott, Deputy Commissioner for Academic and Student Affairs. With the flexibility provided in the lump sum, the system can allocate funds within its budget to enable work toward that goal. If the legislature also decided that development of performance standards was a state goal, it could earmark a specific appropriation for that purpose.

As shown in Table 2, Idaho, Oregon, and South Dakota use limited performance budgeting. In Idaho, university system performance measures are examined, but they are not linked directly to funding. Oregon allocates approximately 0.2 percent of its budget (approximately $780,000 of current unrestricted funds in fiscal 1999) for the attainment of educational goals, which are currently retention of students and transfer of credits within the system. South Dakota allocates 5.0 percent of its budget (approximately $8.2 million of current unrestricted funds) for the attainment of goals set by the Board of Regents.

Montana, Idaho, North Dakota, Oregon, South Dakota, and Washington all use some form of incentive or targeted funding, as shown in Table 2, but the funding is used to varying degrees in different ways. In Montana university system budgeting, the most common use of targeted funding is the practice of establishing specified amounts for legislative audit expenses and restricting the funds for that purpose, only. In addition, Montana earmarked over $9.0 million for the biennium for matching federal research grants, but those funds are appropriated from the newly established coal license tax enacted in HB 260, which was declared unconstitutional.

In contrast to Montana's procedure of earmarking state special revenue for matching federal grants, Idaho earmarks approximately 2.0 percent of the current unrestricted budget (approximately $5.0 million for fiscal 1999) for items such as research, competitive technology grants, and teacher preparation. North Dakota budgeted approximately $2.0 million of current unrestricted funds for the 1999 biennium as the state match for competitive federal grants. That

state also targeted additional funding to system goals established in a six-year strategic plan, and it allowed campuses to reallocate funds internally to fund quality incentives.

Oregon provides state funding for endowment of departmental chairs, thus adding strength to programs that the state wishes to pursue. It also targets funding for faculty salaries, community college partnerships, and a limited tuition freeze. (The latter emphasis on a required tuition freeze would probably be unconstitutional in Montana, because the state cannot legally control tuition directly or indirectly.)

South Dakota and Washington both use even more limited forms of funding targeted toward reaching state goals. South Dakota earmarked approximately $600,000 of current unrestricted funds in fiscal 1999 for improvements in technology. In the same year Washington decided it wanted to increase its university system enrollment and earmarked some funds for that purpose.

States also differ on the base to which incremental costs are applied, as shown in Table 2. Montana bases its budget calculations on detail at the program level. It combines all programs by unit within the system to reach a budget that is then appropriated to the Board of Regents as a lump sum to be distributed to the units as the Board deems necessary. Rod Sundsted, Associate Commissioner for Fiscal Affairs, provided the PEPB with details of this procedure in a memo dated November 4, 1999. Arizona, South Dakota, and Washington base their budgets on the individual units, Idaho uses a base of programs across the system, and North Dakota budgets a salary pool for the system as well as base and incremental funds by unit.

COMPARISON OF FINANCING OBJECTIVES BY BUDGET METHOD

At the November meeting, the PEPB heard the "Models" report in which the financing objectives of higher education were detailed. As explained in that report, the budgeting methods discussed above vary widely in their ability to achieve the primary financing objectives. The report showed how: 1) incremental, formula, and performance based budgeting accomplished each financing objective; and 2) Montana accomplished a greater number of objectives by using a combination of budgeting methods. This section of this report expands that analysis to show how the Montana budgeting process compares to selected states in the ability to meet financing objectives.

As noted above, all the comparison states use incremental budgeting. As shown by the first column of Table 3, this method is the least able to meet the major financing objectives:

1) equality of opportunity for students;
2) innovative management;
3) quality of services;
4) recognition of cost differences;
5) access to higher education;
6) ongoing assessment;
7) long range planning;
8) increased productivity; and
9) development of accurate data.

In order to maintain the ability to provide the long range planning on the basis of accurate data achieved through the incremental method, and still at least partially meet the other objectives, all comparison states except Arizona and Washington have added components of formula and performance budgeting. As shown in Table 3, both Idaho and Oregon score slightly higher than Montana in the ability to meet the financing objectives, primarily because they have taken steps to encourage quality through the use of performance based budgeting, as noted above.

Table 3
Summary of Fiscal 1999 Higher Ed. Objectives by Budgeting Method & State

Financing Objectives	Incre-mental	For-mula	Perfor-mance	MT	AZ	ID	NM	ND	OR	SD	WA
A. Provide for Equity	1	3	2	3	1	2	3	3	2	1	1
B. Incentives for Innovation	1	2	3	2	1	3	2	2	3	3	1
C. Encourage Quality	1	1	3	1	1	3	1	1	3	1	1
D. Recognize Cost Differences	2	3	1	3	2	2	3	3	2	2	2
E. Enhance Access	1	3	2	3	1	2	3	3	2	1	1
F. Incentives for Ongoing Assessment	1	2	2	2	1	2	2	2	2	1	1
G Provide for Long-Range Planning	3	2	1	3	3	3	3	3	3	3	3
H Provide for Increased Productivity	1	3	3	3	1	3	3	3	3	1	1
I. Rely on Accurate Data	3	2	1	2	3	3	2	2	3	3	3
TOTALS	14	21	18	22	14	23	22	22	23	16	14
AVERAGES	1.56	2.33	2.00	2.44	1.56	2.56	2.44	2.44	2.56	1.78	1.56

1 Does not meet the objective 2 Partially meets the objective 3 Meets the objective

Montana may wish to put more emphasis on the objective of quality. The first step may be to determine the quality level by defining measurements, as presented by Dr. Joyce Scott at the November 4, 1999 PEPB meeting. Once the quality level is known, the legislature can decide if further action is warranted.

Montana's ability to meet the financing objectives shown in Table 3 is equal to that in New Mexico and North Dakota, primarily because the three states all incorporate formula factors in their budgeting systems. These factors allow increased emphasis on equity, cost differences among units, student access to the system, and increased productivity, as noted in "Models." The formulas applied in budgeting can partially meet the objective of providing incentives for innovation in all three states. However, when those incentives are combined with lump sum funding, Montana's appropriation allows more management innovation than can occur in either New Mexico or North Dakota (not reflected in Table 3). Continuation of the lump sum funding could fully meet the objective of encouraging innovation.

Montana also partially meets the objective of providing incentives for ongoing assessment through action such as the implementation of the negotiated faculty salary and workload agreements in 1994-1995. If the legislature wishes to encourage further assessment, it could request assessments to evaluate performance on an ongoing basis and perhaps even make some funding contingent on meeting the requirement.

DISTRIBUTION OF APPROPRIATED FUNDS

Once the budgets are determined, the comparison states vary in their approaches to distribution of funds, as shown in Table 4. Montana, Idaho, and Oregon generally make the primary appropriation of funds to the boards of regents or boards of higher education as lump sums for distribution to the units. However, the State Board of Education in Idaho is a state agency with no more autonomy than any other executive agency, although state officials identify the system as being state-controlled. The Oregon board is given its power by statute and also lists itself as state-controlled. Thus, of the three systems having system-wide appropriations, the Montana University System is the only one having a true lump sum appropriation with the authority to spend it as it deems fit. Arizona, New Mexico, North Dakota, South Dakota, and Washington legislatures primarily appropriate directly to the individual units.

Table 4
Comparison of Legislative Appropriations

	MT	AZ	ID	NM	ND	OR	SD	WA
Major Legislative Appropriations:								
Coordinating Agency	X		X			X		
Individual Campuses		X		X	X		X	X
Other Legislative Appropriations:								
Coordinating Agency					X			
Individual Campuses						X		
Restricted Line Item	X	X	X		X	X	X	X
Students Directly*				X				

*NM provides gambling funds scholarships directly to students, who then use those funds to help them pay tuition

As shown in the second section of Table 4, all the comparison states modify the primary appropriation in some way. All but New Mexico use restricted line items for some state purpose. Montana, Arizona, Idaho, South Dakota and Washington use line items for special purposes such as legislative audits, non-beneficiary students at tribal colleges, research, competitive technology grants, teacher preparation, performance funding, or additional enrollment. North Dakota appropriates some pooled funds to the Board of Higher Education for salary and technology distributions to the units, in addition to earmarked funds for certain system goals such as research. Oregon appropriates small portions of funds for individual units or programs and targets some funding for state goals such as improvements in engineering and faculty salaries or imposition of a tuition freeze.

New Mexico appropriates funds directly to units by formula, without restricting funds in any other way. However, New Mexico also has a scholarship program funded by gambling revenues. Each resident student who currently qualifies for the program receives a scholarship directly from the state. The student in turn uses those funds to pay tuition. As of the fall of

1999, the scholarship is a full tuition grant, but it is only partially implemented. Currently, 8,000 of nearly 39,000 resident students are receiving the funds, but as fall 2000 and 2001 entering freshmen receive grants, the percentage of full tuition will decline, according to state officials.

The above provide examples of the variety of ways that legislatures in the comparison states earmark state funding to accomplish state goals. Constitutionally, the Montana legislature can also line item state general fund to accomplish targeted public policy, as it has for tribal colleges and legislative audits. It cannot earmark or try to control university tuition in any way. However, if the legislature wanted to change public policy regarding research, deferred maintenance, tuition assistance programs, quality assessment, or any other policy, it could line item and restrict a portion of the budget for the identified purpose. It could then appropriate the remainder of the funds as a lump sum for university system management.

CONCLUSIONS AND RECOMMENDATIONS

The above narrative compares Montana to selected other states in the areas of: 1) governance and control; 2) budgeting; 3) ability to meet specified objectives of higher education; and 4) method of appropriation. Each comparison addresses a different aspect of the effectiveness of lump sum funding, as measured in terms of the public policy promoted and achieved. Conclusions and possible recommendations based on the above discussion are addressed below.

Conclusions

Of the comparison states, the Montana and North Dakota university systems are constitutionally nearly autonomous. The public policy thus achieved is university management of the university system. The lump sum funding in Montana enhances that public policy of system management by allowing the Regents financial as well as governing flexibility. However, one difficulty with the lump sum funding as it exists in Montana is that no measurements are in place to determine the effectiveness of the financial flexibility in providing quality education. While North Dakota does not have lump sum funding, it appears to have addressed the measurement issue by implementing reporting and performance requirements.

The budgeting methods used by the various states are remarkably similar in that they all start with a base and increase it incrementally, regardless of the type of governance. The comparison states then include various other tools to accomplish other public policies. Formulas based on enrollment help guarantee access; formulas based on programs help focus policy on instruction, libraries, or other areas of public interest. Incentive components or line items focus university attention on public policies of concern to the state. When any of these tools are used in budgeting, they reduce the public policy of maximum university management flexibility inherent in the lump sum, but they may add focus to other public policies, such as improvement of libraries or plant maintenance.

A combination of incremental, formula, and performance based budgeting can be effective in meeting the various financing objectives for higher education. The lump sum appropriation of a budget, regardless of calculation method, increases the effectiveness of a university system in

meeting the various objectives, as the system has prioritized them. The lump sum is much less effective in accomplishing legislative policies if they differ from the system priorities, because the basic public policy inherent in lump sum funding is university rather than legislative control. Therefore, targeting or line items are used to ensure attention to legislative policies.

Finally, a comparison of the states shows that the majority of legislatures appropriate funds to the individual campuses. These mini-lump sums can accomplish legislative and/or campus priorities, but they do little to address policies affecting an entire system. To compensate for these concerns, other methods are used to address global issues. For example, North Dakota appropriates a pooled fund to its central agency for coordinating a pay plan, and all comparison states but New Mexico use line items restricted for particular purposes. Again, these techniques reduce the effectiveness of a lump sum in maintaining system or unit management flexibility, but they increase attention to other legislative priorities.

Recommendations

The first SJR 16 requirement of the Joint Subcommittee on Postsecondary Education Policy and Budget is to "evaluate the effectiveness of the current system of providing lump sum funding." Based on the evaluation of lump sum funding in this and prior reports, which recommendations does the PEPB wish to make? The PEPB recommends that:

1) the 2001 Legislature continue to approve lump sum funding for the Commissioner of Higher Education and the campuses of the University of Montana and Montana State University;

   a) encourage the system to continue development of performance measures that will demonstrate that lump sum funding is being used to provide quality education;

   b) appropriate funds in restricted line items for areas of legislative concern; or

   c) define specific topics for consideration of line item budgeting.

2) the 2001 Legislature appropriate funds directly to the campuses; or

   a) appropriate to the Board of Regents certain pooled funds, such as pay plan or funds for the development of performance measures, for system-wide purposes; and/or

   b) appropriate funds in restricted line items for areas of legislative concern.

3) some other action, as determined by the committee.

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APPENDIX 9

Alternative Methods for Funding Higher Education

1) Current Law
2) State Policy Environments for Higher Education
3) Potential Policy Changes
4) Summary

MONTANA LEGISLATIVE BRANCH

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Legislative Fiscal Analyst
CLAYTON SCHENCK

April 14, 2000

To: Joint Subcommittee on Postsecondary Education Policy and Budget

From: Sandy Whitney, Senior Fiscal Analyst

Re: Alternative Methods for Funding Higher Education

The 1999 legislature passed SJR 16, which proposed a study of higher education funding in Montana. One of the goals of that study is to "identify alternative funding systems, such as delivering funding in the form of student scholarships." The purpose of this report is to provide a discussion paper to meet that requirement.

The report first identifies some of the current constitutional and statutory law relating to higher education. It then discusses the theory of the state policy environments for higher education and how the current practices fit within those environments. Finally, the report addresses some potential policy changes, some of the statutory and constitutional changes needed to implement those new policies, and some possible financial consequences of those actions.

CURRENT LAW

Both constitutional and statutory laws control the finance and governance of the Montana University System (MUS). The Constitution, states in:

1) Article V, section 11, subsection 5, that "no appropriation shall be made for religious, charitable, industrial, educational, [emphasis added] or benevolent purposes to any private individual, private association, or private corporation not under control of the state;"

2) Article X, section 6, that "the legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect [emphasis added] appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination." The only exception, stated in subsection 2, is that the provisions "shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education;" and

3) Article X, section 9, subsection 2, that "the government and control of the Montana University System is vested in a Board of Regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the

Montana University System and shall supervise and coordinate other public educational institutions assigned by law."

Further financial and governance provisions are included in statute. In section 15-10-107, MCA, a six-mill levy for the MUS is levied on the taxable value of all real estate and personal property subject to taxation in the state of Montana in accordance with a referendum passed by a vote of the people. This levy is required by section 20-25-423, MCA, which states "the legislature shall levy a property tax of not more than six mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1999. All revenue from this property tax levy must be appropriated for the support, maintenance, and improvement of the Montana University System."

The support of the university system is further defined in 20-25-422, MCA. Subsection 2 of that section states that "the entire income of all the funds [including all tuition, fees, millage, and general funds] must be placed at the disposal of the Board of Regents...and must be used solely for the support of the colleges and departments of the university or those connected with the colleges and departments."

Constitutional and statutory provisions make it very clear that the Board of Regents is not subject to legislative control in management, program, or expenditure of university funds. However, the legislature is responsible for the appropriation of state funds, it is not required to appropriate any particular amount from the general fund, and it may designate the use of funds through line items or other means.[1]

STATE POLICY ENVIRONMENTS FOR HIGHER EDUCATION

The point of the above constitutional and statutory review is not to delineate respective powers, but to illustrate the fact that the state and the MUS operate through the implementation of specific public policies. These policies establish an environment in which the stakeholders – the state and its taxpayers, the university system, and the student market served – all have input into the service provided.

The performance of higher education may be influenced by the state policy environment, which includes both the state government role in balancing the competing professional and student market influences and the university system need to compete for students in the educational market place. This policy environment may be visualized as a triangle, with the state, higher education, and the student stakeholders each occupying a point of that triangle.[2]

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[1] McClure, Eddye: "The Structure of Higher Education in Montana", September 1999.

[2] Richardson, Richard C., Kathy Bracco, Patrick Callan, and Joni Finney: Designing State Higher Education Systems for a New Century, American Council on Education, Oryx Press, 1999, pp. 11-17.

State/Higher Education Relationship

The line between the state authority and higher education represents the traditional relationship between the two, with the state having various levels of control, depending on provisions in its constitution and statute.

Montana has a university system so autonomous that it is basically a charter system of higher education. As defined by Berdahl and MacTaggart,[3] a charter college is a publicly owned institution that: 1) sets tuition rates; 2) controls personnel policies, including tenure and collective bargaining; 3) makes purchases and constructs buildings independently; 4) raises private funds aggressively; and 5) agrees with state officials to meet specific performance standards. As a system, the MUS basically meets all the criteria of a charter college except: 1) construction of buildings when state funding is requested; and 2) agreeing with state officials on standards of performance to measure the university system quality.

By constitutional design, reaffirmed by the Montana electorate in 1996 when it defeated a proposal to remove constitutional autonomy,[4] the state has relatively little authority over the Board of Regents. The only real authority retained by the state is the ability to: 1) appropriate state funds and designate their use, as noted above; and 2) require performance measures and standards, should it choose to do so.

University System/Student Relationship

The second side of the triangle represents the relationship between the university system and the students. According to Richardson, et al, this line is the basis for discussions on human capital and the analysis of rates of return. In Montana, this discussion has centered around: 1) faculty workloads and productivity, particularly in the collaborative agreements of the 1990s; and 2) the student outcomes, based on performance measures currently being developed by the university system.[5] This is a market discussion based on the students being willing to pay the stated price for the quality of education being offered.

State Government/Student Relationship

The third side of the triangle is then the relationship between the government and the student market. As noted by Richardson, et al, the state could use its power to actually restructure the market, rather than simply providing services through a bureaucracy. While state action to affect

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[3] Berdahl, Robert O. and Terrence J. MacTaggart: "Charter Colleges: Balancing Freedom and Accountability", Pioneer Institute for Public Policy Research, Boston, Massachusetts, January 2000, pp. iv.

[4] CI-30: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 9 OF THE MONTANA CONSTITUTION TO REPLACE THE BOARD OF EDUCATION, THE BOARD OF REGENTS, AND THE COMMISSIONER OF HIGHER EDUCATION WITH THE DEPARTMENT OF EDUCATION AND A STATE EDUCATION COMMISSION", November 1996.

[5] Scott, Joyce: Report on Performance Measures presented to the Joint Committee on Postsecondary Education Policy and Budget, November 4, 1999.

the market is limited in Montana, federal policies of the last fifty years have greatly influenced the number of students seeking higher education in Montana, as well as elsewhere.

Montana Influence on the Student Market

The most recent actions by the Montana legislature affecting the student market are the appropriation of general fund for: 1) the support of nonbeneficiary students in the tribal colleges; and 2) the Baker scholarships. To the extent that the tribal colleges admit nonbeneficiary students in greater numbers than before, this support: 1) expands the educational choices for students by providing state support in a non-state college; and 2) increases the student market by that number of students who would otherwise not have enrolled in postsecondary education. Note that the funds are paid if nonbeneficiary students enroll in tribal colleges. There are no need-based or merit-based provisions restricting the payments.

The Baker Scholarships, formerly known as the Montana Tuition Assistance Program (MTAP), are $500 grants to working students whose financial resources are just above the level at which they can qualify for federal Pell grants. Quantifiable data are not available, but theoretically these grants expanded the market to the extent that additional lower middle-income students were able to enroll at one of the MUS campuses. The Baker grants are need-based and implement a policy of expanding access to more students.

Federal Influence on the Student Market

While Montana higher education policies affecting the market have only recently been enacted, market-changing policies initiated at the federal level are well documented. F. King Alexander[6] noted that the federal government first supplied federal scholarships directly to students rather than institutions through the Serviceman's Readjustment Act, better known as the "G. I. Bill," after World War II. The result was an explosion in the number of students to whom higher education was financially available and a rapid expansion of the capacity of higher education in all states to serve that market.

Federal aid expanded through the 1960s and 1970s to include grants, loans, work-study programs, and graduate assistance for the needy to use at most public and private colleges and universities of their choice, including secular colleges. With the enactment of the Higher Education Act of 1965, federal National Defense Student Loans became the current Guaranteed Student Loan Program and the Supplemental Educational Opportunity Grants Program (SEOG) were implemented. The Higher Education Act of 1972 established Pell grants for needy students and State Student Incentive Grants (SSIG). According to Alexander, the 1972 legislation "ushered in an era where full-fledged public support of private and parochial colleges and universities would continue unabated through direct student aid programs... By the mid-1970s, it was clear that the federal government had adopted a need-based voucher approach to funding collegiate accessibility for needy student populations."

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[6] Alexander, F. King: "Vouchers in American Education: Hard Legal and Policy Lessons from Higher Education", Journal of Education Finance, Volume 24, Number 2, Fall 1998, pp. 153-157.

According to Alexander, the "most significant development that transpired during the federal policy shift to the voucher idea was the immense influence that these concepts had on state higher education policy." States began using state funds to match direct student aid programs, moving away from state policies prohibiting the flow of public resources directly or indirectly through students to private institutions. States whose constitution did not prohibit such transfers indirectly, as does Montana's Constitution, found that "student aid programs quickly emerged as the most widespread means of indirectly channeling state dollars to private colleges and universities." This transfer was justified by using the argument that subsidizing the "overall share of students at private institutions was a viable economic alternative to subsidizing enrollments in public colleges and universities" and that it increased student choice.

As a result of the federal and state policies providing direct student need-based aid, and subsequently direct merit-based aid such as the Georgia Hope Scholarship, "public college and university students received only 63 percent of the dollar awards received by students attending private institutions" by 1996, according to Alexander. The two major reasons for this change are: 1) students were able to use state dollars to attend private institutions, resulting in an increased number of students funded by state funds; and 2) "in order to expand student choice in a system with dissimilar educational costs, aid formulas regularly grant students attending higher cost institutions a greater share of the available resources," as noted by Alexander. (In Montana, constitutional provisions allow federal funds to be used as vouchers to students attending secular schools, but they prohibit the use of state funds for that purpose.)

Alexander concludes, "after a quarter of a century of federal and state voucher systems in higher education, public colleges and universities find themselves shortchanged in funding. Initially, higher education vouchers, in the form of federal direct student aid, were justified as a means to expand educational opportunity and to provide lower-income students with choices to obtain high quality education in private colleges. It was also justified as a way to indirectly support private colleges with public resources. Today, growing disparities in expenditures per student continue to favor private higher education, while lower-income student access to private institutions remains limited. This is occurring despite the fact that greater amounts of federal funds per student are now expended through direct student grants and subsidized loans for students in private colleges than for students in public institutions."

POTENTIAL POLICY CHANGES

As noted above, alternative methods of funding higher education can alter the relationships between: 1) the state and the university system; 2) the state and the students; and 3) the students and the university system. However, ***the changes documented above were enacted specifically to achieve certain policy goals*** – i.e. vouchers for veterans were provided as a way to implement the federal policy of increased educational opportunity for a specified group of individuals. The relationships among the stakeholders changed as a result of the policy implementation.

In a similar manner, the alternative funding issue can be addressed through the state policy changes that might be desired. The state goals might include increased educational opportunities for students, increased quality of education, increased competition among the schools for

students, decreased duplication of programs, increased retention of freshmen, etc. Some goals may be mutually exclusive. For example, schools may compete for students by providing additional degree offerings. However, implementation of a competition policy may lead to increased duplication of programs, increased cost, and less operational efficiency.

The issue is, then, what additional or substitute higher education policies might Montana wish to pursue? If, for example, the Montana legislature wished to pursue a policy of expanding educational opportunities for Montana students, which student populations would it target? Would the target students be those who might need financial opportunity, those who desire a greater diversity of program opportunity, or both. Options could include expanding opportunity for: 1) low income students; 2) students desiring increased access to higher education; 3) merit scholars; or 4) resident students wishing to attend any regionally accredited public or private institution.

The following narrative provides a framework for considering policy changes that could provide expanded opportunity for students. The options discussed below are illustrations, only; no attempt is made to consider all possible policy changes or all options for implementing any one policy.

Expanding Opportunity for Low Income Students

This section discusses expansion of financial opportunity for low-income students to attend a Montana college or university. An increased number of low-income students would perhaps find college affordable and would enroll if tuition were reduced, need-based tuition waivers were offered, or the state offered direct grants to help meet expenses. The state cannot mandate a decrease in tuition or an increase in tuition waivers unless the constitution is amended to provide state control instead of regent control of the system. As noted above, a constitutional amendment to make the university system a state agency was defeated by the voters four years ago. However, even if that amendment had passed, a state reduction in tuition revenue would require increases in general fund or decreases in expenditures.

The remaining option, general fund earmarked for direct student aid, was implemented by the 1997 Legislature in the form of $500 Baker grants to working, moderately low-income students. Those grants could be extended to include very low-income students who are eligible for Pell grants, with the hope that more low-income students would have the financial opportunity to enter college. However, there is no documentation indicating that an extra $500 is sufficient to allow more students to enter college, considering that the total student responsibility per year is approximately $7,000, including costs of tuition, fees, books, personal expenses, and board and room. The grants do reduce the financial burden, and presumably the debt load, for those lower-income students who do stay in college, but there is no guarantee that the grants have improved access for more students. It may be that only larger grants will increase financial access. In any case, expansion of the Baker grants in either size or volume will put increased pressure on the state general fund.

Expanding Opportunity for Increased Access to Higher Education

If the state wishes to expand the number and variety of programs available to students, it could consider the policies of increased programming within the university system or providing state funded opportunities outside the university system. Again, the state cannot dictate programs within the system because that is constitutionally under the control of the Regents. However, the legislature did request in HB 2 that the Regents reduce duplication of programs in the MUS. The Regents have been taking action to eliminate little-used and duplicate programs, continuing most recently with elimination of selected programs at the UM campuses in January and at the MSU campuses in March, 2000. These actions have contributed to economy and efficiency within the system, but they have also reduced student choices.

Assuming the legislature does not wish to reverse the above policy, it can still develop a greater range of options for students by selectively funding programs not available in the MUS. For example, the legislature has historically provided greater opportunity for Montana students by funding medical, dental, and veterinary slots for Montana residents in other states. It could increase opportunity further by funding slots for other programs not currently available in Montana, such as dental hygiene programs being considered by the Regents.

In addition, in the 1997 and 2001 biennia, the legislature appropriated general fund for state support of nonbeneficiary students attending tribal colleges in Montana. The legislature also approved the expenditure of general fund for the development of distance education programs in the 2001 biennium. These actions contribute to a greater choice of location, and as a result, potentially greater opportunity for access to college programs than was available prior to the 1997 biennium.

Expanding Opportunity for Merit Scholars

The above two sections described actual or potential state activity that could increase financial or programmatic access to higher education for Montana students. This section deals with expanding opportunity for merit scholars, regardless of whether they have demonstrated financial need. States such as Georgia, as noted by Alexander above, established scholarships for all seniors graduating from high school with a minimum grade point average and guaranteed continuation of those scholarships as long as students did well in college. The merit-based scholarships are funded with new gambling revenue from a recently initiated program, rather than from state general fund. The program not only guarantees that capable, motivated students can get a college education, but it helps keep some of the "brightest and best" students in the state institutions by allowing them to use gambling scholarships in lieu of tuition. However, that specific program could not have been enacted in Georgia without a large, new funding source because the funding replaced tuition.

Montana does not have a large, new source of funding to replace tuition. However, one option for funding merit scholars could be a change of policy from current minimal requirements for

enrollment[7] to a policy of allowing state-funded access only to residents who meet or exceed higher scholastic standards. The allocation of state funds per qualified resident student would be larger than the current average of approximately $4,500[8] because it would be allocated to fewer students. These students could still pay the regular resident tuition, less student aid. Assuming that qualified and motivated students would be more likely to continue their education, retention would be higher and fewer state dollars would be spent for students who dropped out.

Students who could not meet the standards would be required to pay tuition equal to the full cost of education, less student aid. Assuming that students do respond to market influences, those who really want to go to college may make more effort in high school or their first year in college to qualify for state subsidized tuition, rather than tuition equal to the total cost of education.

A policy of this nature might result in changes in relationships among students, the state, and the MUS. For example, the policy might increase the academic quality of the student body, and, as a result, could encourage: 1) the "best and brightest" to stay in Montana; and 2) increased programming quality to challenge the altered student population. If retention increased because of the funding incentives, resulting in total net increases in the resident student population, additional state funding may be required to completely implement the new policy.

Students who performed at lower levels in high school or who did not perform well in their first year of college would certainly be discouraged from attending if they had to pay the full cost of tuition. Assuming that a college certificate or degree is desirable for most residents, the policy might include some sort of a "second chance" after a year or two to mitigate the access limitations for students who could not originally qualify or lost their qualification for state funding. Once qualified, they would have full access to the 170 state-subsidized credits allowed by the Regent's policy[9].

At least two risks are inherent in a policy of providing state funding for qualified resident students. First, if grade points are the only considered indicator, grade inflation demanded by a student market could negate the policy of state funding for qualified students, only. To offset this risk, other performance indicators might be included in evaluating performance, such as ACT or SAT exams at the high school level or standard performance qualifying examinations at the college level.

A second risk is the possibility of destabilizing the funding for the university system. Potential revenue losses and gains may or may not offset each other. While the system would be receiving as much or more state funding than it receives under the current budgeting system, it could lose resident tuition revenue to the extent that students not qualified for state funding did not enroll. Theoretically, a smaller student body would allow compensating reductions in expenditures, especially in student services. However, those theoretical expenditure reductions may not be possible if a more highly qualified student market demanded more challenging course work,

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[7] Policy and Procedures Manual: Montana Board of Regents of Higher Education, Policy 301.1.
[8] Whitney, Sandy: "Montana University Units Compared to Peers in Selected States", Legislative Fiscal Division, January 28, 2000, p. 15.
[9] Policy and Procedures Manual: Montana Board of Regents of Higher Education, Policy 940.27.

smaller classes, upgraded libraries, etc., possibly resulting in increases in the instruction and academic support programs. If the state did not provide the additional funding under this scenario, the MUS might increase tuition to improve programs, rather than risk loss of more of the brightest students to out-of-state schools.

Opportunity for Access to Any Regionally Accredited Institution

The most complete method of expanding opportunities for program diversity for Montana students, given the current university system autonomy, is to privatize the university system and provide state funding directly as scholarships (vouchers) to students, much as the federal government did under the "GI Bill." If students could then use the state scholarships for regionally accredited programs in any public or private university in the United States, in-state and out-of-state universities might be encouraged to compete for those students.

A policy change of that magnitude would focus university attention almost entirely on the student market, resulting in significant impacts on the relationships among the students, state, and university system. Implementation of the policy would require constitutional and statutory changes and financial agreements between the state and the university system to convert public facilities to private facilities. Implementation would likely result in changes in university financial support, particularly in tuition increases to compensate for loss of some state general fund and possibly all of the millage, as discussed below.

Relationships among the Students, State, and University System

Under the current system, Montana policy is to operate a public, tax assisted university system and use tax dollars to subsidize all Montana resident students enrolled in the MUS. Students can enroll for a subsidized education in almost any field of choice, and the MUS has a fairly reliable funding base for the services it offers students in a system minimally controlled by state policy makers, as noted above. In a privatized system, the state would have no influence over the university system and no guarantee that students were receiving fair value for the state funds expended. The MUS would be focused on policies, price, and product that would allow effective competition for the student market, as noted above.

Implementation of a Privatization Policy

Implementation of a privatization/competition policy would require constitutional and statutory changes and financial agreements between the state and the university system to convert public facilities to private facilities. No attempt is made here to research all constitutional and statutory provisions that must be addressed. However, it is clear that amendments would be required in Article X of the constitution. Section 6 must be amended to allow indirect aid to sectarian schools if students are to be allowed to use a state voucher in the private colleges in Montana. Amendments to eliminate references to the Board of Regents would be required in Section 9.

Amendments would also be required in Sections 10 and 11 relative to university funds and disposition of state and federal land grant university lands.

Extensive revisions and/or elimination of statute would be required in the university section of Title 20, Chapters 25 through 32, which include administration and finance of the entire system. The finance section includes a reference to the six-mill levy that is specifically for the support and maintenance of the Montana University System. In addition, the legislature would have to address Title 17 provisions governing the outstanding general obligation bonds existing on university system buildings.

Changes in University Financial Support

The changes in MUS financial support would likely involve millage, state general fund, and tuition. Approximately $15 million in revenue each year from the six-mill levy is earmarked by statute for the support and maintenance of the university system, as noted above. If the university system were privatized, that six-mill levy could either be eliminated or re-authorized for the support and maintenance of the Montana resident students enrolled in higher education. If the six-mill levy were re-authorized for all resident students, the university system could lose the portion that students took to other public or private universities.

Under a privatization/competition scenario, the university system would also lose some of the state general fund because a portion of the funds would be used as scholarships in other colleges. In fiscal 1996, an estimated 27.8 percent of the college-bound high school graduating seniors attended private schools and out-of-state universities, while 72.2 percent enrolled in Montana public colleges and universities, according to WICHE statistics.[10] That ratio is extrapolated to fiscal 2000 in Table 1 and used to estimate the number of Montana residents in college throughout the nation from the actual number of FTE registered in Montana, including community colleges. As the table shows, approximately 36,800 Montana FTE could be attending college nationwide in fiscal 2000.

The total general fund plus millage appropriation for the units, colleges of technology, and the community colleges is $114.2 million in fiscal 2000, as shown in the table, or approximately $4,300 for each resident FTE at MUS campuses and the community colleges. (This average is lower than the $4,500 previously reported because it includes community college students who receive less funding from the state.) However, if the current funding were divided among all Montana students enrolled in higher education, each student would receive a voucher for approximately $3,100 to use at any accredited college. Vouchers thus divided between out-of-system and in-system resident students would result in $82.5 million going to the MUS and $31.7 million going to other institutions, as shown in the table. If all students chose the same institutions under a voucher system, the MUS would lose that $31.7 million or nearly 28 percent of its state funding. If competition between the state system and out-of-state or private institutions is a factor, more students could choose to attend institutions outside the MUS, and the impact would be even higher.

[10] Regional Fact Book for Higher Education in the West: Western Interstate Commission for Higher Education, August 1998, p. 58.

Table 1
All Resident College FTE Anywhere Compared to
Resident FTE Out of State and in Montana
Fiscal 2000 Estimated Financial Implications

	Total in College Out of State Est.	Current Policy In-State	Total in College Anywhere	Total to MT New Policy	Difference New Policy
Spring Graduates-CA 1996 27.8% Out-of-state, 72.2% In-state	1,579	4,110	5,689	4,110	1,579
Total Residents-FY 2000** Including Community Colleges	10,208	26,583	36,791	26,583	10,208
GF & Millage-FY 2000		$ 114,249,272	$ 114,249,272	$ 82,548,822	$ 31,700,450
GF & Millage/FTE-FY 2000		$ 4,298	$ 3,105	$ 3,105	$ 1,193

*WICHE Statistics
**Total Residents In-State - OCHE preliminary number for FY 2000

Assuming the proportion of students in state universities and colleges did not change between the old and projected new policy, the MUS would lose approximately $1,200 per student in state funding, as shown in Table 1. In order to maintain the current levels of funding, the MUS would then have to raise resident tuition by that $1,200, or by approximately 50 percent. The "losers" under the new policy of competition would be those students who chose to stay in Montana units. The "winners" would be the students who chose to attend in-state secular colleges or out-of-state universities because they could use vouchers in lieu of part of the tuition. In addition, if students responded to the financial incentive to leave the MUS and went elsewhere in greater numbers, the ultimate beneficiaries of a competition policy in Montana would be private and out-of-state colleges and universities because they would enroll more students and receive more tuition revenue.

SUMMARY

The above discussion identifies some of the current constitutional and statutory law relating to higher education. It then provides the theory of the state policy environments for higher education and how the current practices fit within those environments. Finally, examples of some potential policy changes are provided for purposes of discussion and possible recommendations to the legislature. Does the PEPB wish to recommend:

1) expanding educational opportunity for low income students;
2) increased assess to a greater number and variety of programs;
3) expanded financial or programmatic opportunity for merit scholars;
4) increased opportunity for access to all regionally accredited universities and programs; or
5) any other policy changes?

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APPENDIX 10

SJR 16 – Local Community Committees

1) Memorandum
2) Title 76, Chapter 3, RCM
3) Session Laws 42nd Legislative Assembly, Chapter 2
4) 20-25-303, MCA
5) Memo to Senator Miller, 11-9-1999

Education and Local Government Interim Committee

56th Montana Legislature

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RESEARCH ANALYST
EDDYE McCLURE
STAFF ATTORNEY
JOANN JONES
SECRETARY
SANDY WHITNEY, FISCAL ANALYST

MEMORANDUM

TO: Sandy Whitney, Senior Fiscal Analyst
FROM: Eddye McClure, Staff Attorney
DATE: September 27, 1999
RE: SJR 16 - Local community committees

In reviewing that portion of Senate Joint Resolution No. 16 requesting that the Education Interim Committee explore some "practical methods of providing greater participation in policymaking and control of expenditures" by those communities in which institutions of higher education are located, I thought you might be interested to know that the concept of local participation has been a part of state law since 1909.

In 1909, the Legislature, pursuant to the authority over higher education granted to it under the 1889 Constitution, enacted statutes codified at sections 75-302 through 76-309, R.C.M. 1909, which created local executive boards for those units of the system identified in section 75-301, R.C.M.. Each board consisted of three members appointed by the Governor, with advice and consent of the State Board of Education, and by law, at least two of the three board members were required to reside in the county where the particular institution was located.

Pursuant to section 75-302, R.C.M., each local executive board was given "such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board . . . ."

In 1971, as part of the codification and revision of the laws pertaining to higher education, the sections of law requiring establishment of local executive boards were repealed by Senate Bill No. 2, and replaced by similar provisions at sections 75-8510 through 75-8512, R.C.M.. However, in confident anticipation that the people of Montana would later adopt as part of the 1972 Constitution the proposed changes in the governance of higher education, Senate Bill No. 2 defined "Regents" to mean "the board of education serving ex officio as regents of the Montana university system" and all former references to the State Board of Education were replaced by the term "regents".

The provisions authorizing local executive boards were renumbered in 1979 with adoption of the

Montana Code Annotated and codified as 20-25-303 through 20-25-305, MCA. Consistent with the provisions of Article X, sec. 9(2), Mont. Const., which vests in the Board of Regents "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system", 20-25-304(2), MCA, provides that these local executive boards shall have "such immediate direction and control, other than financial, of the affairs of the respective units as may be conferred by the regents".

Therefore, I am somewhat unclear about the purpose of that portion of Senate Joint Resolution No. 16 that requests research by the Committee into the practical methods of providing local participation in higher education. Current law already provides for the creation of local executive boards located in university communities to act in an advisory capacity under the supervision and control of the Board of Regents. However, even if local executive boards are established in counties where units of the University System are located, the final responsibility regarding the overall management and control of the University System remains constitutionally with the full Board of Regents and cannot be delegated to an advisory board.

For your convenience, I have attached copies of the original 1909 laws, the pertinent portions of Senate Bill No. 2 from 1971, and a copy of the current statutes related to local executive boards.

1909

(2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed by section 9 of this act prior to the effective date of this act.

History: En. Sec. 8, Ch. 232, L. 1961.

NOTE.—Section 9, Ch. 232, Laws 1961 referred to above, repealed sections 75-201 to 75-206.

CHAPTER 3

CONTROL OF STATE EDUCATIONAL, CHARITABLE AND REFORMATORY INSTITUTIONS

Section 75-301. General control of state institutions.
75-302. Local executive boards—creation, residence and powers.
75-303. Officers—bond of treasurer.
75-304. Term of office.
75-305. Meetings.
75-306. Compensation of members.
75-307. Powers and duties.
75-308. Reports.
75-309. Vacancies.
75-310. Control of expenditures of state institutions.
75-311. Donations, grants, gifts.
75-312. Budget committee.

75-301. (841) General control of state institutions. The general control and supervision of the Montana state university, Montana state college, Montana school of mines, Montana state normal college, eastern Montana state normal school and northern Montana college, all being units of the university of Montana, the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school and Montana state school for the deaf and blind are vested in the state board of education.

History: New section recommended by code commissioner, 1921; amd. Sec. 4, Ch. 160, L. 1925; amd. Sec. 1, Ch. 12, L. 1943; amd. Sec. 3, Ch. 158, L. 1945.

Cross-Reference

State vocational school for girls, executive board, sec. 80-904 et seq.

References

Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 982.

Collateral References

Colleges and Universities⇐7; Reformatories⇐2; States⇐82.

14 C.J.S. Colleges and Universities §§ 17-19; 76 C.J.S. Reformatories § 4; 81 C.J.S. States § 102.

* **75-302. (842) Local executive boards—creation, residence and powers.** There shall be an executive board consisting of three (3) members, for each of said institutions named in the preceding section, excepting the Montana state industrial school, all of whom shall be appointed by the governor, by and with the advice and consent of the state board of education. The president of such institution shall not be eligible to appointment as a member of the board. At least two (2) of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said

state board, provided this section shall not apply to the executive board for the state vocational school for girls.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 842, R. C. M. 1921; amd. Sec. 4, Ch. 158, L. 1945; amd. Sec. 3, Ch. 242, L. 1953.

References

Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

Collateral References

Colleges and Universities⇐7; Reformatories⇐2; States⇐82.

14 C.J.S. Colleges and Universities §§ 17-19; 76 C.J.S. Reformatories § 4; 81 C.J.S. States § 102.

75-303. (843) **Officers—bond of treasurer.** The board, (excepting the board of the Montana state industrial school herein provided for,) shall elect a chairman and shall also appoint a secretary who may or may not be a member of said board. The treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairmen and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners.

History: En. Sec. 3, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 843, R. C. M. 1921; amd. Sec. 4, Ch. 242, L. 1953.

Collateral References

Colleges and Universities⇐7; Reformatories⇐3; States⇐82.

14 C.J.S. Colleges and Universities §§ 17-19; 76 C.J.S. Reformatories § 7; 81 C.J.S. States § 102.

55 Am. Jur. 8, Universities and Colleges, §§ 12, 13.

75-304. (844) **Term of office.** The three (3) members appointed by the governor shall, except as herein otherwise provided, hold office for the term of three (3) years from and after the third Monday in April of the year appointed, unless sooner removed by the governor or by the state board of education; providing that the appointments shall be so made that the term of office of one member shall expire each year. Such members shall qualify by making and filing their oath of office with the state board of education.

History: En. Sec. 10, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 844, R. C. M. 1921; amd. Sec. 5, Ch. 242, L. 1953.

75-305. (845) **Meetings.** The executive board of each of said institutions shall meet in regular session at least once in each quarter, and monthly, or oftener, if the business of such institutions require it.

History: En. Sec. 5, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 845, R. C. M. 1921.

75-306. (846) **Compensation of members.** The members of each of the executive boards shall receive such compensation for their services as shall be fixed by the state board of education, not exceeding the sum of five dollars ($5.00) for each day actually spent in the discharge of their

official duties, and not exceeding the sum of one hundred and twenty-five dollars ($125.00) in any one (1) year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institutions, all expenses necessarily incurred by them in discharge of their official duties as members of said boards.

History: En. Sec. 11, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 846, R. C. M. 1921; amd. Sec. 6, Ch. 242, L. 1953.

75-307. (847) **Powers and duties.** Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board. Said executive boards shall also have and exercise power and authority in contracting current expenses, and in auditing, paying, and reporting bills for salaries, or other expenses incurred in connection with such institutions; provided, the board of examiners may not limit the power of the executive board in making expenditures or contracts which in no single instance or for any single purpose exceed two hundred and fifty dollars.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 847, R. C. M. 1921.

Actions against State Board of Education

The state board of education may be sued for a breach of contract without the consent of the state to the action. Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

Collateral References

55 Am. Jur. 8, Universities and Colleges, §§ 12, 13.

Tort liability of public schools and institutions of higher learning. 160 ALR 7.

75-308. (848) **Reports.** Each of said executive boards shall, on or before the first Monday in June of each year, make a detailed statement and report of all its transactions and of the condition of the institutions, including the number of teachers, professors, and employees, with the salary or wages paid to each, and a detailed statement of all expenses and disbursements of such institution, which report shall contain such other information or recommendations as may be required by the state board of examiners, or by the state board of examiners and the state board of education, and the state board of education and the state board of examiners shall have authority to call for a report and statement from such executive boards at any time such board may deem it advisable. All such reports by such boards shall be made in triplicate, one copy shall be retained by such board, one copy shall be filed with the state board of education, and one copy with the state board of examiners.

History: En. Sec. 6, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 848, R. C. M. 1921.

75-309. (849) **Vacancies.** All vacancies occurring in the membership of any of said executive boards shall be filled by appointment by the governor, which appointments shall be referred to the state board of education at its first meeting thereafter for confirmation.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 849, R. C. M. 1921.

$15.00 to $17.00 per day. Duties.

(28) Typists shall receive fifteen dollars ($15) to seventeen dollars ($17) per day each. They shall perform duties assigned to them by the persons to whom they are responsible.

$17.50 to $19.50 per day. Duties.

(29) The journal typist of each house shall receive seventeen dollars fifty cents ($17.50) to nineteen dollars fifty cents ($19.50) per day each. They shall perform duties assigned by the secretary of the senate or chief clerk of the house.

$28.00 per day maximum.

(30) Any other legislative employee shall receive a salary set by the committee on legislative administration in the house where employed but not more than twenty-eight dollars ($28) per day.

Pay for days of employment. Authorization to extend employment.

Section 3. The salaries specified in this act shall be paid for every day of the legislative session during which the employee is employed. The presiding officer of each house may authorize, when necessary, the continued employment and compensation of employees for a period not to exceed fifteen (15) days after the adjournment of a session of the legislative assembly.

42nd assembly only.

Section 4. The salaries specified in this act are effective only for employees of the forty-second legislative assembly.

Modified by joint action.

Section 5. The positions and salaries specified in this act may be modified by joint action of the committees on legislative administration in each house if persons are employed jointly by the house and senate. Salaries for persons employed jointly shall be fixed by the committees on legislative administration meeting in joint session at amounts not to exceed twenty-five ($25) per day.

$25.00 per day maximum.

Effective immediately

Section 6. This act is effective on its passage and approval.

Approved January 12, 1971.

CHAPTER 2

An Act to be Known as the Montana Higher Education Code for the Codification and Revision of the Laws

Pertaining to Higher Education, Including the Montana University System; Repealing Sections 75-107, 75-108, 75-109, 75-216 through 75-223, 75-301 through 75-314, 75-401 through 75-416, 75-501 through 75-515, 75-601 through 75-611, 75-701 through 75-738, 75-801 through 75-811, 75-901 through 75-907, 75-1001 through 75-1006, 75-1101 through 75-1104, 75-1201.1, 75-2014, 75-4707, R.C.M., 1947; Providing a Severability clause and Providing the Effective Date of this Act.

It is the intent of the legislative assembly that all sections of this bill be codified in title 75, R.C.M., 1947, under the chapters and sections as indicated.

Be it enacted by the Legislative Assembly of the State of Montana:

Establishment of Montana University System

Co-educational system.

Section 1. Section 75-8401. **Purpose.** The Montana university system shall instruct men and women on equal terms.

Definitions.

Section 2. Section 75-8402. **Definitions.** Subject to additional definitions contained in subsequent chapters which are applicable to specific chapters or parts, and unless the context requires otherwise, terms are defined as follows: (1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university;

"Agricultural experiment station."

(2) "Regents" means the board of education serving ex officio as regents of the Montana university system;

"Regents."

(3) "State university" means the Montana state university, located at Bozeman;

"State university."

(4) "System" means the Montana university system;

"System."

(5) "University" means the university of Montana, located at Missoula.

Composition of university system.

Section 3. Section 75-8403. **Units constituting university system.** The Montana university system is composed of the following units, each designated by its legal name: (1) university of Montana, located at Missoula;

(2) Montana state university, located at Bozeman;

(3) Montana college of mineral science and technology, located at Butte;

obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

Unit income shall not discharge obligations of another unit.

Section 35. Section 75-8506. **Units of financing.** In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the Montana university system may be considered as one; but income received at one (1) unit shall not be used to discharge obligations created for facilities at another unit.

Limitation—use of state funds.

Section 36. Section 75-8507. **Restriction on use of state funds.** No state funds except those specified in section 33 [75-8504] shall be obligated or used for the purposes of this chapter, unless specifically directed by the legislative assembly.

No impairment of previous contracts.

Section 37. Section 75-8508. **Previous contracts unimpaired.** This chapter shall not impair any contract, indenture or agreement executed under previous laws.

Prior obligations not affected.

Section 38. Section 75-8509. **Prior obligations not affected.** No provision of this chapter shall affect or impair: (1) any contract or undertaking, or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to the effective date of this chapter; and

(2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to the effective date of this chapter.

Part 2. Local Executive Boards

Unit executive boards

* Section 39. Section 75-8510. **Local executive boards, terms, and compensation.** (1) There is a local executive board for each unit of the system.

Three members appointed by governor.

(a) Each local executive board shall consist of three (3) members appointed by the governor, with the advice and consent of the regents.

President not a member.

(i) The president of each unit shall not be a member of the local executive board.

Residence

(ii) Two (2) of the members must reside in the county where the unit is located.

Vacancies.

(iii) All vacancies shall be filled by appointment by the governor and referred to the regents at their first meeting thereafter for confirmation.

Chairman and secretary elected.

(b) Each local executive board shall elect a chairman and appoint a secretary.

Term of office.

(2) The members shall hold office for three (3) years beginning the third Monday in April of the year appointed.

Removal.

(a) The members may be removed by the governor or the regents.

Expiration.

(b) The term of office of one member shall expire each year.

Filing oath to qualify.

(c) The members shall qualify by filing their oath of office with the regents.

Compensation.

(3) The compensation for the members shall be fixed by the regents.

Limitations.

(a) It shall not exceed five dollars ($5) for each day spent in discharging their duties nor one hundred and twenty-five dollars ($125) in any one (1) year for each member.

Reimbursement for expenses.

(b) The member shall be reimbursed from the amount appropriated by the legislative assembly for the maintenance and support of the units for all expenses necessarily incurred in discharge of their duties.

* Section 40. Section 75-8511. **Powers of local executive boards.** Each local executive board shall: (1) Meet at least once each quarter, and more often if required.

Meetings

Powers.

(2) Have such immediate direction and control, other than financial, of the affairs of the respective units as may be conferred by the regents.

(3) Have and exercise power and authority to:

(a) contract current expense;

(b) audit, pay, and report bills for salaries, or other expenses of the respective units.

$250.00 limitation

(i) The board of examiners may not limit the power of the local executive boards in making expenditures or contracts which in no single instance or for any single

purpose do not exceed two hundred and fifty dollars ($250).

Annual report.

(4) On or before the first Monday in June of each year, make a detailed report of:

Transactions

(a) all its transactions and of the condition of the unit;

Payroll.

(b) the salary and number of teachers, professors, and employees; and

Expenses and disbursements.

(c) a detailed statement of all expenses and disbursements of the unit and any other information or recommendations as may be required by the state board of examiners, or by the state board of examiners and the regents.

Call for other reports.

(i) The regents and the state board of examiners may call for a report and statement from each local executive board at any time.

Distribution of reports.

(d) All reports shall be made in triplicate, one copy for the local executive board, one copy for the regents and one for the state board of examiners.

Part 3. Presidents

Powers of president.

Section 41. Section 75-8512. **President—powers and duties.** Subject to the supervision of the regents, the president of each of the units of the system shall: (1) have the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;

Duties.

(2) be the president of the general faculty, and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;

Professorship.

(3) have the duties of one of the professorships as long as the interests of the unit require it;

Corresponding secretary.

(4) perform the duties of corresponding secretary for the unit;

Annual report.

(5) make an annual report to the regents containing such information as they may request; and

Special reports.

(6) furnish any special report on request of the regents or the legislative assembly.

FINANCE

Tuition charges—resident students.

Section 42. Section 75-8601. **Charges for tuition—waiver of nonresident fees.** (1) Except in the law and medicine departments and for extra studies, tuition shall ever be free to all students who shall have been residents of the state for not less than one year next preceding their admission to any unit of the University of Montana.

(2) The regents may:

Tuition rates.

(a) prescribe tuition rates for students enrolled in the law school or for extra studies, and for nonresident students; and

Waiver

(b) waive at its discretion, nonresident tuition for selected and approved nonresident students not to exceed at any unit two percent (2%) of the total number of students enrolled at that unit.

Priority of resident students.

(3) No nonresident student may be admitted to the exclusion of any resident student.

Annual and perpetual appropriation

Section 43. Section 75-8602. **Support of university of Montana.** (1) For the support and endowment of the university there is annually and perpetually appropriated:

(a) the university fund income, and all other sums of money appropriated by law thereto;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

Separate fund.

(2) The entire income of all such funds shall be placed at the disposal of the regents by transfer to its treasurer, and shall be kept separate and distinct from all other funds.

Use of income

(a) The income shall be used solely for the support of the colleges and departments of the university or those connected therewith.

Use of gifts.

(3) All means derived from other public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designated by the donor.

auditoriums, theaters, music halls, and other assembly, theatrical, al, and entertainment facilities;

hospital, nursing, and other health instruction and service facilities;

nurseries, harns, arenas, pavilions, and other facilities for agricultural vestock breeding, development, and exhibition;

parking lots and ramps and other parking facilities; and

) land needed for the facilities.

story: En. 75-8503 by Sec. 32, Ch. 2, L. 1971; R.C.M. 1947, 75-8503; amd. Sec. 74, 0, L. 1987; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 5, Ch. 243, L. 1997.

·References

hen construction authorized by Regents, 02.

Legislative intent regarding construction of student housing, 18-2-103.

0-25-303. Local executive boards — terms and compensation. (1) e is a local executive hoard within each county in which a university system pus is located.

2) (a) Each local executive board consists of three members appointed hy governor with the advice and consent of the regents.

b) The president of a unit or the chancellor of a campus may not he a nber of the local executive hoard.

c) Two of the members must reside in the county where the unit is located.

d) The members shall hold office for 3 years beginning the third Monday pril of the year appointed. The term of office of one member shall expire n year.

(e) The memhers may he removed hy the governor or the regents.

(f) The members shall qualify by filing their oath of office with the regents.

(3) All vacancies must be filled by appointment by the governor and erred for confirmation to the regents at their first meeting after ointment.

(4) Each local executive board shall elect a presiding officer and appoint a retary.

(5) The compensation for the memhers must be fixed by the regents. It y not exceed $5 for each day spent in discharging their duties or $125 in any ar for each member. The members must be reimbursed from the amount propriated hy the legislature for the maintenance and support of the units all expenses necessarily incurred in discharge of their duties.

History: En. 75-8510 by Sec. 39, Ch. 2, L. 1971; R.C.M. 1947, 75-8510; amd. Sec. 18, . 308, L. 1995.

20-25-304. Powers of local executive boards. Each local executive ard shall:

(1) meet at least once in each quarter and more often if required;

(2) have such immediate direction and control, other than financial, of the ffairs of the respective units as may be conferred by the regents.

History: En. 75-8511 by Sec. 40, Ch. 2, L. 1971; amd. Sec. 1, Ch. 351, L. 1971; R.C.M. 947, 75-8511.

20-25-305. President — powers and duties. Subject to the supervision f the regents, the president of each of the units of the system shall:

(2) be the president of the general faculty and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;

(3) have the duties of one of the professorships as long as the interests of the unit require it;

(4) perform the duties of corresponding secretary for the unit;

(5) make an annual report to the regents containing such information as they may request; and

(6) furnish any special report on request of the regents or the legislature.

History: En. 75-8512 by Sec. 41, Ch. 2, L. 1971; R.C.M. 1947, 75-8512.

20-25-306. Designation of holidays by board of regents. (1) The board of regents of higher education may designate the following business days as holidays for all employees of the university system in exchange for the same number of legal holidays enumerated in 1-1-216:

(a) the Friday following Thanksgiving;

(b) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and

(c) the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

(2) A full-time employee who is scheduled for a day off on a day that is designated as a holiday under subsection (1) is entitled to receive another day off with pay during the same pay period of the designated holiday or as scheduled by the employee and his supervisor in addition to the employee's regularly scheduled days off provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the designated holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

History: En. Sec. 1, Ch. 340, L. 1981.

20-25-307. Disposition of land. (1) The board of regents may sell, exchange, and lease land and grant easements and licenses on land that is held or administered by the board of regents or the system and that is held by the state for the use and benefit of the board of regents or the system.

(2) The board of regents may not grant an estate or interest in land that was granted to the state in trust for the support and benefit of the system.

(3) In disposing of any estate or interest in land pursuant to subsection (1), the board of regents shall obtain consideration that equals or exceeds the full market value of the land. For sales and exchanges, full market value must be determined by the board of regents after an appraisal by a certified or licensed appraiser. If the appraiser determines that the valuation is not complicated and estimates, based on available data, that the full market value of the property is $10,000 or less, the board of regents may use a restricted or limited appraisal.

(4) Before approving an exchange of land, the board of regents shall give

Education and Local Government Interim Committee

56th Montana Legislature

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November 9, 1999

Senator Ken Miller
P.O. Box 186
Laurel, MT 59044

Dear Senator Miller:

As part of the work of the Education and Local Government Interim Committee, the Joint Subcommittee on Postsecondary Education Policy and Budget is implementing Senate Joint Resolution No. 16, which you sponsored during the 1999 Legislative Session and which directed the interim committee to study the administration and funding of the Montana University System. One portion of Senate Joint Resolution No. 16 directs the Committee to explore "practical methods of providing greater participation in policymaking and control of expenditures by communities in which higher education institutions are located".

At the November 4, 1999, meeting of the Subcommittee in Helena, I discussed with members the information contained in the attached memorandum concerning that portion of Senate Joint Resolution No. 16 that requested that the Committee study methods to provide participation in the University System by those local communities in which the units are located. As outlined in the memorandum, in 1909, the Legislature, pursuant to the authority over higher education granted to it under the 1889 Constitution, authorized the formation of local executive boards in each county in which a University System campus is located. Although adoption of Article X, section 9, of the 1972 Montana Constitution, which vested in the Board of Regents "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system", provided the Board with sufficient authority to initiate such local committees without legislative approval, the provision regarding local executive boards was never repealed with adoption of the Montana Code Annotated and is now codified at 20-25-303 and 20-25-304, MCA. According to the Board of Regents, a local executive board exists in each community where a unit of the University System is located.

Following my presentation and a brief discussion on the issue, the Subcommittee concluded that no additional action or legislation was necessary to implement this portion of Senate Joint

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Resolution No. 16 and asked that I forward to you a copy of the memorandum concerning local executive boards. If you have questions, please do not hesitate to contact me.

Sincerely,

Eddye McClure

Eddye McClure
Staff Attorney
Enclosure

80 copies of this public document were published at an estimated cost of $7.00 per copy, for a total cost of $560.00, which includes $560.00 for printing and $.00 for distribution.